

September 14, 2021

Honorable Seth Damon
Office of the Speaker
24th Navajo Nation Council

***Re: CAU-48-21, An Action Relating to an Emergency and the Navajo Nation Council;
Enacting COVID-19 Requirements for all Navajo Nation Government Employees; Urging all
Navajo Nation-Owned Enterprises/Authorities/Corporations and Schools, Businesses and
Other Entities Operating Within the Navajo Nation to Promptly Adopt COVID-19 Vaccination
Requirements***

Dear Speaker Damon,

CAU-48-21 is fully enacted after the President of the Navajo Nation did not sign nor veto CAU-48-21 within ten-days (10) pursuant to 2 N.N.C. § 1005(C)(12). The President of the Navajo Nation waived his authority by not signing into law nor vetoing legislation CAU-48-21.

Generally, the President of the Navajo Nation can sign legislation into law or veto within ten-days after the legislation is certified by the Speaker of the Navajo Nation pursuant to 2 N.N.C. §§ 1005(C)(10)(11). However, 2 N.N.C. § 1005(C)(12) provides:

The President's authority to sign into law or veto legislation shall be deemed to be waived if not exercised within ten calendar days after certification of the legislation by the Speaker of Speaker Pro Tem and the legislation shall be deemed enacted and become effective pursuant to 2 N.N.C. § 221."

Here, the President did not exercise his authority to sign or veto CAU-48-21 after the Speaker certified the legislation on August 31, 2021. The legislation, CAU-48-21, was delivered to the President's Office on August 31, 2021. The President's 10-day period began on September 1, 2021, and expired on September 10, 2021, at 5:00pm (MST). Because the President did not exercise his authority to sign into law nor veto the legislation, the legislation is deemed to be enacted.

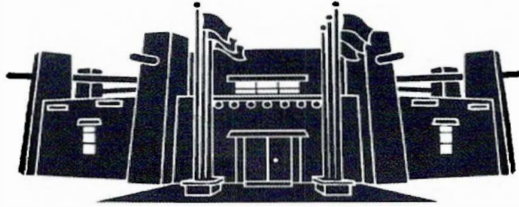
Therefore, CAU-48-21 is enacted pursuant to 2 N.N.C. § 1005(C)(12).

Sincerely,

Dana Bobroff, Chief Legislative Counsel
Office of Legislative Counsel

Chad Abeyta, Attorney
Office of Legislative Counsel

Office of Legislative Counsel
Telephone: (928) 871-7166
Fax # (928) 871-7576



Honorable Seth Damon
Speaker
24th Navajo Nation Council

Xc: Jonathan Nez, President
Navajo Nation

Doreen McPaul, Attorney General
Navajo Nation Department of Justice

Manual Rico, Executive Director
Office of Legislative Services

RESOLUTION OF THE
NAVAJO NATION COUNCIL
24th NAVAJO NATION COUNCIL - THIRD YEAR, 2021

AN ACTION

RELATING TO AN EMERGENCY AND THE NAVAJO NATION COUNCIL; ENACTING COVID-19 VACCINATION REQUIREMENTS FOR ALL NAVAJO NATION GOVERNMENT EMPLOYEES; URGING ALL NAVAJO NATION-OWNED ENTERPRISES/AUTHORITIES/CORPORATIONS AND SCHOOLS, BUSINESSES AND OTHER ENTITIES OPERATING WITHIN THE NAVAJO NATION TO PROMPTLY ADOPT COVID-19 VACCINATION REQUIREMENTS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. 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."
- B. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).

SECTION TWO. FINDINGS

- A. On January 30, 2020, the World Health Organization issued a Public Health Emergency of International Concern and declared the novel coronavirus (COVID-19) outbreak and pandemic.
- B. On March 11, 2020, the Navajo Nation Commission on Emergency Management, with the concurrence of the Navajo Nation President, declared a Public Health State of Emergency on the Navajo Nation in response to the spread of the COVID-19. See CEM-20-03-11.
- C. Since declaring the Public Health State of Emergency, the Navajo Nation has issued more than fifty (50) Public Health Emergency Orders to prevent the spread of COVID-19, including stay at home orders and daily curfews for the Navajo Nation. The Public Health Emergency Orders are available for review at <https://www.ndoh.navajo-nsn.gov/COVID-19/News-Update>.

- D. The Navajo Nation exercised its inherent sovereign powers to pass numerous emergency legislations relating to the spread of COVID-19 on the Navajo Nation, including, but not limited to, the closure of Navajo Nation roads to visitors and tourists, the closure of government offices except for essential workers, closure of schools, and reducing Chapter meeting quorums, to ensure the protection and well-being of Navajo Nation citizens. See, e.g., CMA-09-20, CN-90-20, CMA-14-20, CMA-16-20, and CAP-19-20.
- E. In late 2020, the U.S. Food and Drug Administration ("FDA") recognized the COVID-19 vaccines as a critical tool to address the pandemic and issued an emergency use authorization under federal law for the vaccines' use against COVID-19.
- F. Like the FDA, the Navajo Nation has recognized that the COVID-19 vaccines are a critical tool in the fight to mitigate the spread of the virus and that the virus transmits more freely and mutates into more transmissible and/or deadly variants through unvaccinated individuals. In short, adult individuals that do not receive the COVID-19 vaccine place the entire Navajo populace at risk of unnecessary infection.
- G. The Center for Disease Control ("CDC") is monitoring the current notable variants within the United States (B.1.1.7 (Alpha), B.1.351 (Beta), P.1 (Gamma), and B.1.617.2 (Delta)), and has observed that some of the emerging variants spread more easily and quickly than the original virus.
- H. The CDC reports that credible studies suggest that the currently authorized vaccines are effective against the transmissions of the COVID-19 virus, as well as the variants to a less degree. Center for Disease Control and Prevention, *Science Brief: COVID-19 Vaccines and Vaccination*, National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases (July 27, 2021) available at: <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html>
- I. On June 18, 2021, the Navajo Department of Health reported the first confirmed case of the SARS-CoV-2 (COVID-19) Delta variant, also referred to as the B.1.617.2 variant, from a COVID-19 test sample. The Navajo Nation continues to see an increase in Delta variants across the Navajo Nation.
- J. As of August 18, 2021, the Navajo Nation Department of Health has confirmed that 31,997 Navajo Nation residents have tested positive with COVID-19 and that 1,390 Navajo members have deceased due to COVID-19.: See <https://www.ndoh.navajo->

nsn.gov/COVID-19/Data. The Navajo Nation continues to see new cases confirmed weekly and expects to see a significant rise in COVID-19 cases with the highly transmissible Delta variant.

- K. As of August 23, 2021, the FDA approved Pfizer-BioNTech COVID-19 vaccine as the first preventative vaccine against COVID-19. The FDA is an agency within the U.S. Department of Health and Human Services which protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices.
- L. In general, people are considered fully vaccinated: 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.
- M. The Navajo Nation Employee Benefits Program provides 100% coverage for COVID-19 vaccination and testing.
- N. Navajo Nation employees may test for COVID-19 at any location listed in the following link provided by the Navajo Nation Department of Health: <https://www.ndoh.navajo-nsn.gov/COVID-19/COVID-19-Testing>
- O. Navajo Nation employees may receive COVID-19 vaccinations at any location listed in the following link provided by the Navajo Department of Health: <https://www.ndoh.navajo-nsn.gov/COVID-19/COVID-19-Vaccine>
- P. On August 20, 2021, the President of the Navajo Nation issued Executive Order No. 007-2021 mandating COVID-19 vaccinations for Navajo Nation employees.
- Q. The Navajo Nation has continuously asserted its inherent sovereignty in self-government throughout its history since time immemorial, through its language, culture, value system, and legal heritage based on Diné fundamental law.
- R. Diné Traditional Law teaches that the leaders elected will communicate with the people for guidance; leaders who will use their experience and wisdom to always act in the best interest of the people; and leaders who will also ensure the rights and freedoms of the generations yet to come.. 1 N.N.C. § 203(A).
- S. Pursuant to Diné Traditional Law, the Navajo Nation Council (Al,á,ají' Naat'ájí Naat'ááh and Al,á,ají' Naat'ájí Ndaanit'áii or Naat'aanii) shall enact policies and laws (Diné

bibeehaz'áanii) in harmony with Diné bi beenahaz'áanii to address the immediate and future needs... (1 N.N.C. § 203(D)).

- T. The Navajo Nation hereby finds that further spread of COVID-19 within the exterior boundaries of the Navajo Nation poses a threat to the health, safety, and wellbeing of all Navajo Nation citizens and residents.
- U. The Navajo Nation hereby finds it in the best interest of the Navajo Nation to require all Navajo Nation government employees to become vaccinated, and for Navajo Nation-owned enterprises/authorities/corporations, as well as schools, businesses, and other entities operating within the Navajo Nation to promptly adopt COVID-19 vaccination requirements.

SECTION THREE. ESTABLISHING THE COVID-19 VACCINATION REQUIREMENT FOR ALL NAVAJO NATION GOVERNMENT EMPLOYEES

- A. Leadership of the Navajo Nation is exceptionally concerned about the danger of COVID-19 which can cause severe respiratory illness and even death and hereby enacts and establishes vaccination requirements for the health, safety and wellbeing of Navajo Nation employees and the general public within the Navajo Nation.
- B. The Navajo Nation hereby establishes the requirements that:
 - 1. All employees of the Navajo Nation Legislative, Executive and Judicial Branches, as well as employees of all Navajo Nation chapters, including employees of Local Governance Act ("LGA") certified chapters, be fully vaccinated against COVID-19; and
 - 2. Employees who are not fully vaccinated, for any reason, against COVID-19 are required to provide documentation to their supervisor that the employee has tested negative for COVID-19 every fourteen days after the effective date of this legislation.
- C. As used herein, a person is "fully vaccinated" two (2) weeks after the second dose in a 2-dose series, such as the Pfizer or Moderna vaccines; or two (2) weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.
- D. Acceptable documentation showing that the employee has tested negative for COVID-19 shall include medical provider statement, testing facility test results, or a written self-certified statement indicating the date and facility of the testing.

- E. Violations of the requirements set forth herein shall be "just cause" for disciplinary measures under the Navajo Preference in Employment Act.
- F. Navajo Nation employees shall ensure compliance with these requirements within forty-five (45) days after implementation of the COVID-19 vaccination requirements.
- G. Navajo Nation employees shall continue to adhere to Public Health Emergency Orders issued by the Navajo Nation Department of Health.
- H. The Navajo Nation government shall ensure, consistent with the Navajo Nation Privacy Act and applicable federal law, that any documentation related to vaccination status or test results are not disclosed to individuals other than those necessary to ensure compliance with this enactment.
- I. The COVID-19 vaccination requirements set forth herein supersede any previous orders, departmental level policies, and other directives to the extent they are in conflict.

SECTION FOUR. URGING VACCINATION REQUIREMENTS FOR ALL ENTITIES OPERATING ON THE NAVAJO NATION

In an effort to protect the Navajo populace and for the health, safety and well-being of the general public, the Navajo Nation hereby urges all Navajo Nation-owned enterprises/authorities/corporations, schools, businesses, and other entities operating within the Navajo Nation to promptly adopt and enforce COVID-19 vaccination requirements for their respective employees.

SECTION FIVE. AMENDMENT

The Health, Education and Human Services, upon the recommendation of the Navajo Nation Department of Health, may amend the requirements set forth herein.

SECTION SIX. DIRECTIVE

- A. These requirements shall be incorporated into the personal policies manual applicable to each Branch and Chapter, and the Branch or Chapter shall amend their manuals within 30 days of the enactment of this resolution to reflect these requirements without the need for additional approval by the Health Education and Human Services Committee or other oversight committee.

B. The Navajo Nation Department of Health is authorized to issue further guidance to implement the vaccine requirements set out herein.

SECTION SEVEN. EFFECTIVE DATE

The COVID-19 vaccination and testing requirements enacted herein shall become effective forty-five (45) days after enactment of this legislation pursuant to 2 N.N.C. § 221(B).

SECTION EIGHT. SAVINGS CLAUSE

Should any provision of this legislation, 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, those amendments that are not determined invalid shall remain the law of the 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 12 in Favor, and 06 Opposed, on this 26th day of August 2021.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

Aug 30, 2021
DATE

Motion: Honorable Pernell Halona
Second: Honorable Paul Begay, Jr.

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 _____, 2021.

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 _____, 2021 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

NAVAJO NATION

860

Navajo Nation Council Special Session

8/26/2021
05:30:32 PM

Amd# to Amd# Legislation 0178-21;

PASSED

MOT Halona, P
SEC Begay, P

Yeas : 12

Nays : 6

Excused : 2

Not Voting : 3

Yea : 12

Begay, E
Begay, K
Begay, P

Charles-Newton
Crotty
Freeland, M

Halona, P
James, V
Slater, C

Walker, T
Wauneka, E
Yellowhair

Nay : 6

Brown
Daniels

Nez, R
Smith

Stewart, W

Yazzie

Excused : 2

Tso, E

Tso, C

Not Voting : 3

Henio, J

Tso

Tso, D

Presiding Speaker: Damon