



PUEBLO OF POJOAQUE

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**RESOLUTION REQUIRING SELF-QUARANTINE AT HOME OF
INDIVIDUALS WHO TEST POSITIVE FOR COVID-19 VIRUS
AND
AUTHORIZING AN EMERGENCY ORDINANCE FOR THE
ENFORCEMENT OF MEDICAL TESTING, TREATMENT,
QUARANTINE, AND EXCLUSION PROCEDURES FOR THOSE WHO
DO NOT VOLUNTARILY COMPLY**

WHEREAS, the Pueblo of Pojoaque ("Pueblo") is a sovereign, federally recognized tribe;

WHEREAS, the Pueblo of Pojoaque Tribal Council ("Council") is the governing body of the Pueblo of Pojoaque;

WHEREAS, the Council is vested with all the power, authority, and responsibility for the health, safety, and welfare of all tribal members and the community; for the exercise of all governmental functions of the Pueblo; and for the overall direction and policy of the Pueblo;

WHEREAS, the State of New Mexico and the U.S. federal government declared a state of emergency due to the Coronavirus 2019 (COVID-19) pandemic and the Pueblo of Pojoaque declared a State of Emergency on March 14, 2020 through Resolution 2020-033Q;

WHEREAS, between March 12 and April 30, 2020, the Pueblo of Pojoaque has closed offices, community centers, and businesses, cancelled all meetings, events, and travel, sent all but essential employees home, and instituted a Stay-at-Home Order requiring community members to stay home except to attend to necessary activities, such as obtaining food and medical assistance;

WHEREAS, COVID-19 is a highly contagious virus that spreads quickly through communities and can cause mild to severe respiratory symptoms; further, the current rate of infections in New Mexico is doubling every three days given that this is a virus for which there is little or no immunity and there are at least two new hospitalizations daily putting a strain on the medical resources and providers;

WHEREAS, the federal Centers for Disease Control and the New Mexico Department of Health state that the best way to slow the spread of the virus and the number of people needing medical care is for people to stay home and minimize person-to-person contact;

WHEREAS, the majority of people who have been infected with the virus recover at home and only those with more severe symptoms require hospitalization, therefore federal, state, and Tribal health officials recommend that people with COVID-19 virus symptoms get tested to confirm if they have the virus;

WHEREAS, if a person tests positive for COVID-19, federal, state, and Tribal health officials ask that people isolate themselves at home and that people that they come into contact with or live with self-quarantine for at least 14 days to ensure that they do not spread the virus to others;

WHEREAS, a mandatory quarantine is only needed if individuals who test positive for COVID-19 do not voluntarily isolate themselves at home and put others at risk; refusal to self-quarantine not only puts other members of the community at risk for contracting the virus but also puts a strain on Pueblo resources as the Pueblo is operating with only essential employees and those employees need to stay healthy to provide essential services and keep the community safe;

WHEREAS, numerous states, including New Mexico, and Tribes have implemented voluntary and mandatory quarantine procedures to help reduce the spread of COVID-19;

WHEREAS, pursuant to the emergency powers established by the March 17, 2020 Declaration of a State of Emergency (Resolution 2020-033Q), with this Resolution the Tribal Council is requiring that all persons who reside on the Pueblo of Pojoaque who test positive with the COVID-19 virus quarantine themselves at home, unless they need medical treatment or for other emergency purposes, until they are no longer contagious, which is generally three (3) full days after the primary symptoms (fever, aches and joint pain, severe coughing, shortness of breath) are gone or at least seven (7) days since symptoms first appear or the individual receives two negative tests done 24 hours apart (<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>);

WHEREAS, the Pueblo will continue to provide services and assist any Tribal member who is sick with the COVID-19 virus while they are in self-quarantine;

WHEREAS, the Tribal Council believes that the COVID-19 virus pandemic is of such magnitude and severity that, also pursuant to the emergency powers established in the March 17, 2020 Declaration of a State of Emergency, it must institute the following Emergency Ordinance regarding mandatory testing, treatment, and/or quarantine procedures for all Tribal members and other persons

who reside on the Pueblo of Pojoaque who do not voluntarily self-quarantine after being diagnosed with COVID-19 or who exhibit symptoms and refuse to get tested or who has been in contact with an infected person:

EMERGENCY COVID-19 COURT PROCEDURES

I. Purpose – to protect the health and safety of Tribal members and all other persons within the exterior boundaries of the Pueblo from public health hazards.

II. Statutory Basis - The Pueblo of Pojoaque Law and Order Code at:

(1) Subpart M-22(c) – *Failure to Submit to Treatment for a Contagious Disease* – provides:

The Court upon finding reasonable cause to believe that a person has any contagious disease may order the person examined. If, upon examination, the person is found to be infected with any of the aforementioned diseases [venereal disease, active tuberculosis or other contagious disease], the Court may order the person to submit to medical treatment as prescribed by competent medical authority.

(2) Subpart H-24(5)(A) – *Searches, Seizures and Forfeitures* – provides:

Under the traditional authority of the Tribal government, the Governor or, in his absence, the Lieutenant Governor, may orally, or in writing, command the Tribal Police to effect an arrest or search...whenever there is written or oral evidence presented by the Tribal Police that...there is an impending threat to the health, safety and welfare of the Pueblo, its members, or its visitors. A Tribal Judge also has the authority to effect an arrest or search when the conditions noted above are present.

(3) Subpart H-24(7) – *Welfare checks* – provides:

(a) Under the traditional authority of the Governor or, in his absence, the Lieutenant Governor, he may orally command the Tribal Police or Social Services Department to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land place[d] in federal trust for the Pueblo of Pojoaque.

(b) A Tribal Judge also has the authority to orally command the Tribal Police to conduct a welfare check of a Tribal Member or person living within the Pueblo of Pojoaque-owned land within the exterior boundaries or a person living within land place in federal trust for the Pueblo of Pojoaque.

(e) When a welfare check is conducted, the Tribal Police or Social Services Department shall, in writing, notify the Governor or Tribal Court of their findings.

(4) Subpart M-17 – *Disobedience of a Lawful Order of the Court* – provides:

(a) A person who willfully disobeys any order, subpoena, warrant or command, duly issued by the Pueblo of Pojoaque Tribal Court or any officer thereof is guilty of an offense.

(b) A person found guilty under this section may be sentence to imprisonment for a period not to exceed 365 days or to pay a fine not to exceed \$5,000, or both.

(5) Subpart J-21(a)(c)(d) - *Incorporation of Subpart M as Civil Infractions*

(a),The Pueblo of Pojoaque retains inherent Sovereign power to exercise civil authority over the conduct of both Indians and non-Indians on lands within the exterior boundaries of the Pueblo.

(c) Any person who commits a civil infraction has engaged in conduct that threatens the political integrity, economic security, health, or welfare of the Pueblo.

(d) The offenses in Subpart M, and any other criminal infraction in the Law and Order Code, are hereby incorporated as civil infractions

(e) Any person found to have committed a civil offense incorporated from Subpart M, or any other criminal infraction in the Law and Order Code are subject to a minimum fine of \$300 fine up to a maximum fine of \$5,000

III. Medical Treatment Procedures

A. Pursuant to the procedures outlined in the Pueblo of Pojoaque Law and Order Code (PPLOC) and based upon probable cause of an immediate threat to health and safety, the Governor, Lt. Governor, Tribal Police, or Tribal Court may initiate a welfare check or search to determine if a person is infected with the COVID-19 virus:

(1) The Governor, Lt. Governor, or Tribal Court may contact the Tribal Police and/or the Social Services Department to conduct a welfare check; or

(2) The Governor, Lt. Governor, or Tribal Court may request that the Tribal Police conduct a search for a person or of residential premises.

B. The Tribal Police and/or Social Services Department, with assistance, if necessary, from the Community Health Representative (CHR) Department or other qualified personnel, will conduct a welfare check or search to determine if a person is exhibiting symptoms of COVID-19, or has tested positive and is not under self-quarantine, or has been in contact with an infected person, and will report their findings to the Tribal Court.

C. The Tribal Court may order the person to submit to medical testing or treatment as prescribed by competent medical authority.

D. In addition to requiring medical testing or treatment, or as an alternative to medical testing and/or treatment, the Tribal Court may order the person to be quarantined in their home, or at another location if they do not have a suitable home, for the least restrictive amount of time but no longer than fourteen days. The Tribal Court may order other conditions determined reasonably necessary to protect the health and welfare of the infected person and any other person that may be in contact with the infected person, including, but not limited to, daily welfare checks, medical treatment by a medical professional, transport to a medical facility, or use of personal protective equipment.

E. Pursuant to the PPLOC, M-17, M-22(b), and J-21 a person who refuses to be tested, medically treated, or quarantined may be sentenced to imprisonment for a year or subject to a fine; the sentence shall be suspended if the person agrees to medical treatment. The Pueblo will ensure that a person under Court ordered quarantine has a working phone, adequate food, medication, medical care, and clothing.

IV. Special Hearing Procedures

A. Tribal Court Orders to Be Medically Tested, Treated, or Quarantined. The following procedures will apply to hearing procedures for Tribal Court orders to be medically tested, treated, or quarantined:

1. Any person required to be medically tested, treated, or quarantined may request a hearing within 24 hours of receiving a copy of the Tribal Court's order.

2. An individual who fails to request a hearing within 24 hours of receiving the Tribal Court order will waive their right to a hearing and must comply immediately with the order.

3. If an individual complies with the order, but would like the Court to review the terms of quarantine or reconsider the order, that individual may request a hearing at any time during the quarantine period.

4. If, at any time, during the testing, treatment, or quarantine process, an individual obtains a test result that demonstrates they do not have the COVID-19

virus, the individual may present that test result to the Court and request that the order be dismissed. The Court may require two negative test results.

B. Emergency Hearings.

1. The Court will make every effort to hold a hearing the same day as a request is made, or no later than 24 hours after a request for hearing is received.

2. The Court may hold hearings by telephone or electronically and may accept evidence orally.

3. The Court may require written evidence or affidavits be submitted electronically during or after a hearing.

V. Orders.

1. The Court will issue a written order and may deliver the Order verbally to the affected individual by telephone or other means, including hand-delivery by law enforcement or other individuals authorized to deliver the order by the Court.

2. The order will provide the conditions for obtaining testing, treatment, and quarantine, if necessary.

VI. Enforcement

1. An individual who fails to comply with a Tribal Court order issued under these special procedures shall be subject to the Subparts M-17 and M-22(b), and as incorporated for non-Indians under J-21.

2. Prior to ordering a fine or imprisonment of an Indian who fails to comply with a Tribal Court order issued under these Emergency Court Procedures, the Court will hold a hearing pursuant to the criminal procedural rules in the PPLOC. The Court may order pre-hearing confinement to protect the public.

3. Prior to ordering a fine or permanent exclusion of a non-Indian who fails to comply with a Tribal Court order issued under these Emergency Court Procedures, the Court will hold a civil hearing. The Court may order pre-hearing confinement or exclusion to protect the community.

4. The Court may, while providing appropriate due process, alter the PPLOC procedural rules to avoid unnecessary exposure by the Court, Court personnel, and others required to participate in a hearing and to comply with other COVID19-related governmental orders.

4. The Pueblo, the Tribal Council, its Officials and members, and any other Tribal officer, employee, representative, or agent performing authorized duties pursuant to this Emergency Ordinance are immune from suit for monetary

damages in any court of law for actions or inaction related to implementation or enforcement of this Emergency Ordinance.

VII. Appeals.

Appeals of any order issued by the Tribal Court pursuant to these Emergency Court Procedures may be appealed pursuant to the PPLOC; however any appeal of an order of a medical test, treatment, or quarantine may only be filed after the individual subject to the testing, treatment, or quarantine order obtains a medical test demonstrating that they do not have the COVID-19 virus and the individual provides that test result to the Tribal Court.

VIII. Duration.

These Emergency Court Procedures will be implemented until the Governor, or the Lt. Governor in the Governor's absence, in consultation with the CHR Department, the Tribal Court, and the Emergency Response coordinators, determines that these procedures are no longer needed to address the COVID-19 epidemic and notifies the Tribal Council of that these emergency procedures are being terminated or suspended.

WHEREAS, for all other persons not subject to the Emergency Court Procedures described above, the Pueblo and the Tribal Court may exercise their authority to exclude or remove, pursuant to the PPLOC Subpart P, those persons who refuse to self-isolate or quarantine or otherwise violate any provisions of the PPLOC, a court order, or emergency orders issued by the Pueblo government;

WHEREAS, furthermore, through this Resolution, the Tribal Council authorizes the Pueblo to utilize suitable available vacant housing or other lodging to assist individuals who are voluntarily self-quarantined or quarantined by Court order and who do not have adequate or suitable housing; entry onto premises provided by the Pueblo for quarantine will be limited to authorized persons, which may include state and federal health officials, to protect public health and reduce unnecessary exposure;

WHEREAS, COVID-19 virus test are administered by the New Mexico Health Department and any person who is tested for the COVID-19 virus will be included in the New Mexico Department of Health databases for tracking and treatment; the New Mexico Department of Health and the Pueblo government are not subject to the federal Health Insurance Portability and Accountability Act (HIPAA), which contains provisions for protecting the privacy of certain individually identifiable health information and, during an emergency to control the spread of disease, entities that are covered by HIPPA may disclose information without the individual's authorization for public health activities and purposes; and

WHEREAS, in implementing this Resolution, the Pueblo and its agencies, including the Tribal Court and Police Department, will make every effort to maintain the privacy and confidentiality of individually identifiable health information, protected health information, and the personal privacy of individuals who are subject to the requirements in this Resolution, but may use certain information to carry out the purposes of this Resolution and may release certain information to public health authorities for the purpose of assisting them in their efforts to address the COVID-19 epidemic; only the minimum amount of information necessary to carry out the purpose of this Resolution may be released to: (1) agencies authorized to receive this information under local, state, or federal law, (2) health care providers, (3) law enforcement officials, (4) persons who may be exposed to a communicable disease, (5) persons with information necessary to assist in identifying individuals who may have been exposed to a communicable disease; and (6) the individual who is the subject of this information or their guardian or legal representative.

NOW, THEREFORE BE IT RESOLVED that the Pueblo of Pojoaque Tribal Council hereby requires any person residing on the Pueblo of Pojoaque who receives positive test results for COVID-19, or are exhibiting the signature symptoms of COVID-19, shall self-quarantine at home until their symptoms of fever are gone for three (3) full days after the primary symptoms (fever, aches and joint pain, severe coughing, shortness of breath) are gone or at least seven (7) days since symptoms first appear or the individual receives two negative tests done 24 hours apart.

BE IT FURTHER RESOLVED that all Tribal members and other persons who reside on the Pueblo of Pojoaque who do not voluntarily self-isolate or self-quarantine after being diagnosed with COVID-19 or who exhibit symptoms and refuse to get tested will be subject to the provisions of the Emergency Ordinance - *EMERGENCY COVID-19 COURT PROCEDURES* – contained in this Resolution.

BE IT FURTHER RESOLVED that all other persons who are not subject to the Emergency Ordinance are still subject to the exclusion and removal provisions of the PPLOC.

BE IT FURTHER RESOLVED that the Pueblo may use suitable available vacant housing or other lodging to assist individuals who are voluntarily self-quarantined or quarantined by Court order and who do not have adequate or suitable housing and may limit access to that lodging to authorized individuals.

BE IT FURTHER RESOLVED that the Pueblo will make every effort to maintain the confidentiality of personally identifiable health information and will only use that information and release it pursuant to the provisions in this Resolution.

BE IT FURTHER RESOLVED that nothing in this Resolution or the Emergency Ordinance are intended to waive the Pueblo's sovereign immunity or to be construed as consent by the Pueblo to a lawsuit or claim.

CERTIFICATION

The foregoing Resolution was duly adopted by the Pueblo of Pojoaque Tribal Council, at a duly-called meeting on _____, 2020, by the affirmative vote of ____ in favor, ____ opposed, and ____ abstained.

By: _____
JOSEPH M. TALACHY, Governor

ATTEST:

RAFAELA SANCHEZ, Tribal Secretary