

RESOLUTION OF THE
RECOURCES AND DEVELOPMENT COMMITTEE
of the 25th NAVAJO NATION COUNCIL - Second Year, 2024

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE
NAVAJO NATION BURIAL AND CEMETERY REGULATIONS

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Resources and Development Committee of the Navajo Nation Council shall exercise oversight authority over land and community development and to oversee regulation of activities on Navajo Nation lands for surface disturbance. 2 N.N.C. §§ 500(C) and 500(C) (2).
- B. The Resources and Development Committee shall create rules and regulations intended to ensure the safety and beautification of cemeteries on the Navajo Nation. 13 N.N.C. § 1952; CD-73-22.

SECTION TWO. FINDINGS

On December 30, 2022, the Navajo Nation Council updated the Navajo Nation Code, Title 13, Chapter 11 regarding burials. The Navajo Nation President signed Resolution CD-73-22 on January 6, 2022. This update to the burial provisions of Title 13 Health and Welfare Code tasked the Resources and Development Committee to approve Navajo Nation Burial and Cemetery Rules and Regulations.

SECTION THREE. APPROVAL OF NAVAJO NATION BURIAL AND CEMETERY REGULATIONS

The Navajo Nation hereby approves the Navajo Nation Burial and Cemetery Rules and Regulations attached as Exhibit A.

SECTION FOUR. EFFECTIVE DATE

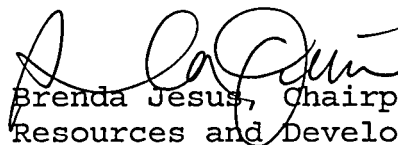
The Action enacted herein shall be effective upon its approval pursuant to 2 N.N.C. § 189(A).

SECTION SIX. SAVING CLAUSE

Should any provision of this Act 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 portions of this Action, which are not determined invalid, shall remain the law of the Navajo Nation.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 25th Navajo Nation Council at a duly called meeting at Mentmore, (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 5 in favor, 0 opposed, on this 14th day of February 2024.



Brenda Jesus, Chairperson
Resources and Development Committee
Of the 25th Navajo Nation Council

Motion: Honorable Shawna Ann Claw
Second: Honorable Rickie Nez

NAVAJO NATION BURIAL AND CEMETERY REGULATIONS

TABLE OF CONTENTS

| | | |
|---------------------|--|-----------|
| <u>Section I</u> | <u>General Provisions</u> | <u>2</u> |
| <u>Section II</u> | <u>Definitions</u> | <u>2</u> |
| <u>Section III</u> | <u>Designation of Sites and Expansion</u> | <u>4</u> |
| <u>Section IV</u> | <u>Types of Cemeteries</u> | <u>4</u> |
| <u>Section V</u> | <u>Burial, Cemetery, and Maintenance Standards</u> | <u>5</u> |
| <u>Section VI</u> | <u>Chapter Burial and Cemetery Policies</u> | <u>7</u> |
| <u>Section VII</u> | <u>Roadside Memorials</u> | <u>9</u> |
| <u>Section VIII</u> | <u>Cremation</u> | <u>9</u> |
| <u>Section IX</u> | <u>Exhumation of Interred Remains</u> | <u>10</u> |
| <u>Section X</u> | <u>Public Health Emergency and Communicable Diseases</u> | <u>10</u> |
| <u>Section XI</u> | <u>Penalties</u> | <u>11</u> |
| <u>Section XII</u> | <u>Sovereign Immunity</u> | <u>11</u> |
| <u>Section XIII</u> | <u>Severability</u> | <u>11</u> |
| <u>Section XIV</u> | <u>Amendments</u> | <u>11</u> |

I. General Provisions

- A. These Navajo Nation Burial and Cemetery Regulations (hereinafter “Regulations”) are promulgated under the statutory authority of the Navajo Nation Burial Statute, 13 N.N.C. §§ 1901-1953, as amended.
- B. *Din4 bi beehaz’lanii*. These Regulations recognize and acknowledge the importance of applying and incorporating traditional principles. Therefore, any provision herein shall be applied consistently with the traditional principles practiced by the local community.
- C. These Regulations shall also be applied consistently with all Navajo laws and other applicable laws such as: Navajo Nation Cultural Resources Protection Act, the Antiquities Act of 1906, the National Historic Preservation Act, the Archaeological and Historic Preservation Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, *Jishchaa’* Policy and all other such acts.
- D. The purpose of these Regulations to set forth the administrative procedures, burial regulations, standards, and protocols for the planning and construction of new cemeteries, for the enlargement of existing cemeteries, and to ensure that all standards and restrictions are met to protect the public health, safety and welfare of the residents of the Navajo Nation.
- E. These Regulations apply to all individuals, organizations, and Funeral Service Providers that provide and perform burials on the Navajo Nation.
- F. Words used in the present tense include the future; the word “will” or “shall” is mandatory and is not discretionary.

II. Definitions

- A. “Access” means the right to cross between public and private property allowing pedestrians and vehicles to enter and leave a property.
- B. “Allotment” means, for purposes of this section, and individual parcel of land that is held in trust by the United States Government for either an individual Indian or the Navajo Nation.
- C. “Burial” means the disposition of human remains by cremation, interment, entombment, or burial beneath the ground.
- D. “Burial Assistance” means financial assistance distributed by the Navajo Nation Division of Social Services.

- E. “Cemetery(ies)” means any place dedicated or not, used for the permanent interment of human remains.
- F. “Chapter Maintenance” means chapter personnel delegated to maintain cemetery grounds.
- G. “Cremation” is the act of reducing the remains of a deceased individual to ashes or cremains.
- H. “Family Plot Cemeteries” means a parcel of land used for the purpose of serving as a cemetery for an individual or a Navajo family.
- I. “Final Disposition Authorization” means the form routinely used to permit burials and that is filed with state vital statistics departments.
- J. “Funeral Service Providers” means a Funeral Home, business, group, or individual that provides a service for a funeral or burial.
- K. “Funerary Objects” means any item that has been intentionally placed at the time of death, or later, with or near the individual human remains as part of the death right or ceremony.
- L. “Human remains” or “remains” means the body of a deceased person.
- M. “Interment” or “burial” means the disposition of human remains by cremation, inurnment, or burial beneath the ground.
- N. “Nation” means the Navajo Nation.
- O. “Navajo Division of Transportation” means the Department that oversees roadways within their road inventory.
- P. “Navajo Land Department” means the Department that authorizes and manages the non-mineral development and use of all Navajo Nation lands in accordance with Navajo Nation and applicable federal laws.
- Q. “Navajo Nation Division of Public Safety” means the Division consisting of the Department of Corrections, Internal Affairs, Police Services, Criminal Investigation Services, Emergency Management Services, Fire and Rescue Services, and Emergency Medical Services.
- R. “Navajo Nation Heritage and Historic Preservation Department” means the Navajo Nation’s lead agency responsible for protection, preservation, and management planning for historic, archaeological, paleontological, and other cultural resources within the Navajo Nation and on other Navajo Nation lands in which the Navajo people have a traditional interest.

- S. "Parking Area" means a durable, permanently surfaced and marked area, excluding area for access, for the parking of motor vehicles.
- T. "Road" means a public or private way created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land, excluding a private way created to provide ingress or egress to such land in conjunction with the use of such land for forestry or agricultural purposes.
- U. "Roadside memorial" means a tribute to commemorate a person or persons who died, most often located at the site of the death.
- V. "Sexton" means the person(s) authorized to sign the Final Disposition Authorization prior to interment of a body in an on-reservation cemetery. The sexton may be the cemetery administrator. The sexton shall not include any Navajo Nation Council Delegate, Chapter Official, Chapter employee, Grazing Official, valid Grazing Permittee, Land Board member, Farm Board Member, or any Nation employee or official unless otherwise specified.
- W. "Tribal member" means anyone enrolled as a member of the Navajo Nation.
- X. "Vandalism" means the willful and unauthorized destruction or defacing of any land, monument, flush marker, tree, shrub, plan, building or other natural or artificial structure within the exterior boundaries of a cemetery.
- Y. "Veteran" means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

III. Authorization for Burial and Cemetery Expansion

- A. Under 16 N.N.C. §§2251 and 2252, use of any Nation lands must be properly authorized. Prior to any burial, any and all Funeral Service Providers shall obtain a signed authorization from an authorized sexton. Unauthorized burials will lead to civil penalties listed under 16 N.N.C. §2253 and §2254.
- B. All new cemeteries and expansion of existing cemeteries must be approved pursuant to the Navajo Land Withdrawal Designation Regulations and/or an approved lease.

IV. Types of Cemeteries

- A. Cemeteries owned and managed by the Nation which includes cemeteries managed by a Chapter or a group of Chapters.
- B. Church cemeteries owned by religious organizations.
- C. Cemeteries within Navajo allotments.

D. Unrecorded or archeological cemeteries. If burials are inadvertently uncovered, the person discovering the burial shall immediately notify the Navajo Nation Heritage and Historic Preservation Department and comply with all prohibitions listed in 19 N.N.C. §1031. See also the Nation's *Jishchaa'* Policy.

E. Family Plot Cemeteries.

1. Family Plot Cemeteries are generally prohibited on Navajo Nation Lands.

2. Any pre-existing burials will be grandfathered-in so as to not violate these Regulations.

3. When a Family Plot Cemetery is authorized pursuant to a lease specifically designated for a Family Plot Cemetery, the follow policies shall apply.

a. The family shall designate a person to be responsible for administering the family plot consistent with these Regulations.

b. The designated family member shall apply for a land withdrawal with the General Land Development Department consistent with the Navajo Land Withdrawal Designation Regulations. This includes new and existing Family Plot Cemeteries. Any person, business, or entity shall not bury anyone unless the family has complied with these Regulations.

c. The family shall draft a "Family Plan of Operation" for the Family Plot that defines the administration of the Family Plot and records the names of decedents which shall be made available to the Nation upon request.

d. The designated family member shall serve as the sexton and be the sole person to authorize a burial within a properly authorized Family Plot Cemetery.

4. Any individual may file a court action in an appropriate Navajo court if a family is violating these Regulations.

V. Burial, Cemetery and Maintenance Standards

A. Purpose. The following standards are intended to provide protected final resting places. The Nation expects cemetery caretakers to plan and organize cemeteries, to ensure cemeteries are improved, safeguarded, and well-maintained. The following standards shall be promulgated to ensure safe and secure burials, in a respectful manner to the surrounding environment and future generations. This section shall be strictly adhered to.

B. Burial Standards. The purpose of this subsection is to outline the standards for all burials occurring within all cemeteries throughout the Nation.

1. No prohibition or requirement shall be made that the decedent is embalmed, confined in a coffin or container, or whether a liner will be required for a grave.
2. Plot size. Each plot/grave shall be 4 feet wide by 9 feet in length and at least 6 feet deep.
3. Veteran's Plot. No burial plot fee shall be charged for a veteran's plot/grave.
4. Spacing. Each plot/grave shall have a passageway of at-least 3 feet around all sides for the purposes of pedestrian travel.
5. Burial Liners. A cement liner or vault is not required for burials; however, if a cement liner or vault is purchased, the vault company is required to deliver and install it in an authorized and designated burial plot/grave.
6. Grave markers. Each grave must be clearly marked to facilitate the location of an individual grave at any time.

C. Cemetery Standards. The Nation recognizes the need to provide regulations to improve safeguarding and beautifying cemeteries as proper final resting places. The purpose of this subsection is to outline the standards for all cemeteries.

1. All cemeteries shall be maintained through efficient management that provides burial plot opening and closing, weed eradication, signage, fencing, and other necessary duties.
2. All cemeteries shall have a designated officer employee to serve as an administrator to assign maintenance tasks, ensure cultural and archeological resources remain undisturbed, and monitor any cemetery expansion.
3. Orientation of graves is discretionary but shall be orderly.
4. The Nation is not responsible for providing pall bearers; however, Chapters may provide burial site excavation and backfill services.
5. All cemeteries are required to have a funeral procession plan that can be made available for funeral service providers to ensure funeral processions on cemetery grounds are carried out in a safe and organized manner.
6. All cemeteries shall have an adequate roadway and entrance for vehicles, such as a funeral hearse, to safely travel either through or around a cemetery.
7. No interments shall be placed on roadways or access points of a cemetery.

8. All cemeteries shall have designated receptacles to be used for funerary debris.

9. Designated administrators shall conduct an evaluation of a cemetery every six months to ensure the safety of the cemetery and repair any damages.

10. All cemeteries shall have set times where no individuals are permitted to enter or be on cemetery grounds.

D. Prohibited Behavior. The following shall be prohibited within all cemeteries throughout the Nation:

1. Traveling off marked roadways within a cemetery in a private vehicle.

2. Spread of cremated remains/human ashes anywhere on the Nation.

3. Use of motorized unlicensed bikes and recreational vehicles.

4. Cats and dogs except service animals such as a guide dog or seeing eye dog.

5. Possession and use of firearms, except for military/law enforcement gun salute services.

6. Soliciting businesses.

7. Persons on cemetery grounds after dusk, except for Navajo Nation Fire Department or law enforcement personnel.

8. Vandalism. Incidents of vandalism shall be reported to the respective Chapter and Navajo Nation Police Department.

9. Recreational walking, jogging, running, and bike riding.

10. With the exception of horse processions for funeral services, livestock (e.g., horses, cattle, sheep, etc.) are not permitted in cemeteries.

11. Animals are not permitted to be buried within any cemetery.

VI. Chapter Burial and Cemetery Policies

A. Delegation to Chapters to Administer Cemeteries. These Regulations provide further guidance for the 1999 delegation of authority for Chapters to create cemeteries and to develop policies for interment. All Chapter policies shall be consistent with these Regulations.

B. A Chapter or group of Chapters may withdraw specific parcels of land to be established as a “Chapter” or “community approved” cemetery in accordance with section 6 of the Navajo Land Withdrawal Designation Regulations and consistent the Chapter’s Community Land Use Plan. When two or more Chapters agree to share a cemetery, the Chapters shall execute an Intragovernmental Agreement outlining the responsibilities of each Chapter.

C. Community Land Use Plans and Zoning. Under 26 N.N.C. §2004 and 6 N.N.C. §§1051-1054, Chapters are responsible for developing Community Land Use Plans for approval by the Resources and Development Committee. Such plans assist the Nation in ensuring that any plans for development are consistent with the plans of the Chapter community. Additionally, such plans assist governance certified Chapters in creating zoning ordinances. Cemeteries within the external boundaries of the Navajo are permitted in designated zoning areas, subject to the restrictions of the Navajo Land Department Homesite Lease Regulations Section 17.08(J). The Chapter Community Land Use Planning Committee shall routinely evaluate the need to withdraw additional land for the purpose of the expansion of a cemetery.

D. Chapter Burial Plot Fees and Services

1. Each Chapter shall determine, through a duly approved resolution, whether there will be a fee for burial plots and burial services.

a. Burial Plot Fees. If a Chapter chooses to charge a fee for plots within a cemetery, the fee shall not exceed \$150.00. A Non-Governance Certified Chapter seeking a greater amount must seek approval from the Resources and Development Committee of the Navajo Nation Council. A Governance Certified Chapter may increase the fee by following the ordinance procedures in Section 2001 of the Local Governance Act.

b. Burial Plot Fees for veteran interment or burial. No burial plot fee is to be charged for a veteran’s interment or burial.

c. Cemetery/Burial Services. A Chapter may charge reasonable fees for burial-related fees such as excavation and backfill services.

2. In the event a family is unable afford the burial fee(s), a Chapter may waive the fees.

3. For any fees collected, the Chapter shall create a fund management plan and such revenue shall be used to maintain the Chapter cemetery and for related purposes.

E. Chapter Burial and Cemetery Policies. The Burial and Cemetery Standards in Section V shall also apply to Chapter cemeteries. If a Chapter wishes to consider supplemental policies and procedures, such policies are subject to further review and approval by the Navajo Nation Department of Justice, Chapter Unit.

F. Chapter Cemetery Administrative Protocols. Any Chapter administering a cemetery shall develop administrative protocols for chapter employees to follow when working with families. Chapters shall provide families with reliable and factual information necessary for the interment of a loved one, such as providing information on the burial assistance program available through the Navajo Nation Division of Social Services.

VII. Roadside Memorials

A. All Roadside Memorials shall be prohibited.

B. All pre-existing roadside memorials shall be removed by the Navajo Department of Transportation.

VIII. Cremation

A. Cremation shall not be performed on the Nation.

B. The spreading of cremated remains within the Nation is strictly prohibited. A violation shall result in a civil penalty not to exceed one thousand dollars (\$1000).

C. For cremations occurring outside the Nation, cremated remains on the Nation shall be buried in a plot within a cemetery.

D. A cemetery administrator (or sexton) may designate a specific area of a cemetery specifically for cremated remains. Cemetery administrators shall document plots/graves of cremated remains within the cemetery.

E. Prior to the burial of cremated remains, a cemetery administrator (or sexton), shall be presented with a cremation I.D. tag provided by a funeral service provider.

F. Burial of Urn Plot/Grave Standards

1. Each burial site may be used for a maximum of 1 urn containing ashes of the deceased.

2. Containers. All urns or other receptacle used for permanent burial must be of durable or lasting material.

3. Plot size. Each plot/grave shall be a reasonable width and depth and six (6) feet deep.

4. Spacing. All plot/graves shall have a passageway of at-least 3 feet around all sides for the purposes of pedestrian travel.

5. Liners. A cement liner or vault is not required for burials, however if a cement liner or vault is purchased, the vault company is required to deliver and install it in the designated burial plot/grave. Although liners are not required, they are encouraged to ensure grounds do not become uneven, maintain public health, and to protect the surrounding environment in its' natural state.
6. Grave markers. Each grave must be clearly marked, to facilitate the location of an individual grave at any time.

IX. Exhumation of Interred Remains

- A. Under 13 N.N.C. §1905, exhumation generally requires the consent of the next of kin of the deceased. If there is no next of kin, exhumation may be approved by the Resources and Development Committee of the Navajo Nation Council.
- B. A law enforcement officer may petition a Navajo Court to exhume interred remains for the purpose of a criminal investigation. A court order from any other jurisdiction may be reviewed by a Navajo Court under principles of comity. In all instances, only an order from a Navajo Court will be recognized. When a court orders an exhumation as a part of a criminal investigation, respect for the deceased person and *Diné bi beenahaz'áanii* shall be recognized at all times.
- C. In all instances of an authorized disinterment, a disinterment permit and written plan for disinterment must be filed with the administrator of the cemetery.

X. Public Health Emergency and Communicable Diseases.

- A. The Navajo Nation Commission on Emergency Management (Commission) shall, in a state of emergency related to public health as duly proclaimed, issue and enforce orders that are reasonably necessary to provide for the safe interment of remains on the Nation. This includes the power to make orders specific to embalming, interment, cremation, disinterment, or transportation.
- B. The Commission:
 1. May determine conditions and order a specific method of interment for remains of a Navajo Person on the Nation, who has died of a communicable disease that is dangerous to public health, within a reasonable or necessary timeframe, as determined by the Commission.
 2. Shall provide and maintain a list of communicable diseases and other notifiable conditions to affected departments and the public by request.
 3. May require the labeling of remains before interment on the Nation with all available identifying information and information concerning the circumstances of death. Persons dying of a communicable disease must be clearly tagged to indicate

that remains may contain a communicable disease and, if known, the specific communicable disease.

4. May require the maintenance of a written or electronic record of all remains that are disposed of on the Nation, including all available identifying information and information concerning the circumstances of death. All written and electronic records shall be safeguarded following applicable privacy standards and may only be released in accordance with applicable laws.

XI. Penalties

A. Any person or Funeral Service Provider shall be strictly liable for violating any provision within these burial regulations. A violation may result in a civil penalty under 16 N.N.C. §2253 and/or §2254. If a violation does not fall under the Nation's Civil Trespass Act but is a violation of these Regulations, any person shall be strictly liable and may be assessed a civil penalty not to exceed one thousand dollars (\$1,000). A repeated violation may result in prohibition of that person or Funeral Service Provider from performing future burials on and within the Nation.

B. Any person may file an appropriate action in any Navajo Court to prevent an unlawful burial or to enforce these Regulations.

XII. Sovereign Immunity

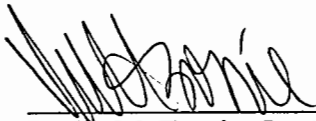
Nothing in this section shall be interpreted as waiving, express or implied, the sovereign immunity of the Navajo Nation nor its chapters, officers, or employees.

XIII. Severability

If any provision, part or parts of these Regulations or the application thereof to any person or circumstances is held invalid, the same shall not affect the validity of the remaining portions of these Regulations.

XIV. Amendments

These Regulations may be amended at any time by the Resources and Development Committee of the Navajo Nation Council.



Leslie M. Tsosie, *Legislative Advisor*
Office of Legislative Services