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TRIBAL MEMORANDUM

DATE : 11/8/21

TO : SUPERINTENDENT, Cheyenne River Agency

FROM : Ev Ann White Feather, Tribal Secretary *EvAnn White Feather*

SUBJECT: Resolution No. 192-2021-CR: That the Tribe implements the following "Measures Regarding Mandatory COVID-19-related Quarantine and Isolation for Residents of the Cheyenne River Sioux Reservation" and that this Resolution is necessary for the immediate preservation of the public peace, health, safety, and welfare of all residents of the Cheyenne River Sioux Reservation and that these emergency health and safety measures shall remain in effect until such time as they are amended or repealed and that this Resolution shall be effective as of August 4, 2021 and contains the provision.

Transmitted herewith are an original and two (2) copies of Resolution No. 192-2021-CR which was duly adopted by the Cheyenne River Sioux Tribal Council during its Regular Session held on August 6, 2021.

Cc: Chairman
Treasurer
Administrative Officer
Tribal Comptroller
Central Record
Legal Department
Health Committee Chairman
Tribal Health CEO
EPD/Command Center
Committee Secretary
District Officers (6)
File/2

The blue represents the thunderclouds above the world where live the thunder birds who control the four winds. The rainbow is for the Cheyenne River Sioux people who are keepers of the Most Sacred Calf Pipe, a gift from the White Buffalo Calf Maiden. The eagle feathers at the edges of the rim of the world represent the spotted eagle who is the protector of all Lakota. The two pipes fused together are for unity. One pipe is for the Lakota, the other for all the other Indian Nations. The yellow hoops represent the Sacred Hoop, which shall not be broken. The Sacred Calf Pipe Bundle in red represents Wakan Tanka – The Great Mystery. All the colors of the Lakota are visible. The red, yellow, black and white represent the four major races. The blue is for heaven and the green for Mother Earth.

RESOLUTION NO. 192-2021-CR

WHEREAS, the Cheyenne River Sioux Tribe of South Dakota is an unincorporated Tribe of Indians having accepted the provisions of the Act of June 18, 1934 (48 Stat. 984); and

WHEREAS, the Tribe in order to establish its tribal organization, to conserve its tribal property, to develop its common resources, and to promote the general welfare of its people, has ordained and established a Constitution and By-laws; and

WHEREAS, the Cheyenne River Sioux Tribe is a federally recognized Indian tribe that reserved its original, inherent right to self-government through the Fort Laramie Treaty of 1851, 11 Stat. 749 (Sept. 17, 1851), and the Fort Laramie Treaty of 1868, 15 Stat. 635 (Apr. 29, 1868). The Fort Laramie Treaty of 1868 provides that the territory of the Sioux Nation was “set apart for the absolute and undisturbed use and occupation” of the Sioux Indians as a “permanent home.” 1868 Treaty, Arts. II, VI. The exterior boundaries of the Cheyenne River Indian Reservation were established by the Act of March 2, 1889, § 4 (25 Stat. 888); and

WHEREAS, the Cheyenne River Sioux Tribe has sovereign authority over its members and its territory, *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140 (1982); *United States v. Mazurie*, 419 U.S. 544, 557 (1975), and it has the right to make its own laws and be ruled by them. *Williams v. Lee*, 358 U.S. 217, 220 (1959); and

WHEREAS, the Cheyenne River Sioux Tribe is organized pursuant to a Constitution and Bylaws adopted under the Indian Reorganization Act of 1934, 48 Stat. 984, with the approval of the Secretary of the United States Department of the Interior. The Tribal Constitution provides that the Tribe has the power to “promulgate ordinances for the purpose of safe-guarding the peace and safety of the Residents of the Cheyenne River Indian Reservation...” C.R.S.T. Const., Art. IV, § 1(k); and

WHEREAS, as described in Resolution #191-2021-CR, the Cheyenne River Sioux Tribal Council believes that we are still in an active and urgent fight to reduce transmission of the COVID-19 virus on the Reservation, and that certain measures must be taken to protect residents from exposure to or infection from this deadly disease; now

THEREFORE BE IT RESOLVED, that the Tribe implements the following “Measures Regarding Mandatory COVID-19-related Quarantine and Isolation for Residents of the Cheyenne River Sioux Reservation”:

Mandatory Quarantine for Exposed or Likely Exposed Persons;
Mandatory Isolation for Infected or Suspected Infected Persons.

The Tribe is requiring a mandatory 10-day *quarantine* from non-quarantined persons for any individuals who are or may have been *exposed* to the COVID-19 virus and who do not show signs or symptoms. The Tribe is further requiring a mandatory 10-day *isolation* from non-isolated persons for any individuals who are *infected* or reasonably believed to be infected with the COVID-19 virus. These requirements will be carried out as described in this section.

A. Definitions

1. "Court" means the Cheyenne River Sioux Tribal Court;
2. "Department" means the Cheyenne River Sioux Tribe Department of Health;
3. "Isolation" means the physical separation and confinement of an individual who is, or group of individuals who are, infected or reasonably believed to be infected with the COVID-19 virus from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals;
4. "Least restrictive" means the policy or practice that least infringes on the rights or interests of others;
5. "Quarantine" means the physical separation and confinement of an individual or group of individuals who are or may have been exposed to the COVID-19 virus and who do not show signs or symptoms of the disease from non-quarantined individuals to prevent or limit the transmission of the disease to non-quarantined individuals.
6. "Resident" means a person who has fixed his or her habitation on the Cheyenne River Sioux Reservation and, whenever absent, intends to return to the Reservation. For purposes of this Order it also means any person who, although he or she may maintain a residence outside the Reservation, temporarily resides on the Reservation at least one night per week for work-related purposes.

B. PROCEDURES

10-day Quarantine. There is a mandatory 10-day quarantine from non-quarantined persons for any individuals who have been identified through contact tracing as having possibly been exposed to another individual who has tested positive for the COVID-19 virus. If an individual does not voluntarily self-quarantine or self-isolate, the CRST Health Department may isolate or quarantine an individual or group of individuals if isolation or quarantine is the least restrictive alternative necessary to prevent the spread of the COVID-19 virus to others.

2. Department-enforced Standards and Conditions. The Department shall adhere to the following conditions and standards when isolating or quarantining an individual or group of individuals:
 - a. *Least Restrictive Means.* Isolation and quarantine shall be by the least restrictive means necessary to prevent the spread of the COVID-19 virus that poses a significant risk to public health; isolation and quarantine may include confinement to private homes or other private and public premises; absent exceptional circumstances that would jeopardize public health, a person shall be allowed to choose confinement in the person's home;
 - b. *Separately Confined.* Isolated individuals shall be confined separately from quarantined individuals;
 - c. *Monitoring of Health Status.* The health status of an isolated or quarantined individual shall be monitored regularly to determine whether the individual continues to require isolation or quarantine;
 - d. *Removed to Isolation.* If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with the COVID-19 virus, the individual shall promptly be removed to isolation;
 - e. *Termination of Isolation or Quarantine.* The Department shall immediately terminate an isolation and quarantine order when an individual poses no substantial risk of transmitting the COVID-19 virus to others.
3. Needs of the Quarantined Individual. The Department may authorize a health care practitioner, public health agent, or another person access to an individual in isolation or quarantine as necessary to meet the needs of the isolated or quarantined individual. An individual who enters isolation or quarantine premises with or without authorization of the Department may be isolated or quarantined if needed to protect the public health.
4. Court Order Required before Department-mandated Quarantine. Before quarantining or isolating an individual, the Department shall obtain a written order from the Tribal Court authorizing the isolation or quarantine, unless the individual consents to the quarantine or isolation. The Department shall file a petition for a written order under this subsection. The petition must:
 - a. *Contents of Petition.* The petition must allege:
 - (i) the identity of each individual proposed to be quarantined or isolated;
 - (ii) the premises subject to isolation or quarantine;
 - (iii) the date and time the isolation or quarantine is to begin;
 - (iv) the suspected contagious disease;
 - (v) that the individual poses a significant risk to public health;

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- (vi) whether testing, screening, examination, treatment, or related procedures are necessary;
- (vii) that the individual is unable or unwilling to behave so as not to expose other individuals to danger of infection; and
- (viii) that the Department is complying or will comply with (b) of this section; and

b. *Affidavit of Medical Officer.* The Petition must be accompanied by an affidavit signed by a Tribal medical officer attesting to the facts asserted in the petition, including specific facts supporting the allegations required by (a)(iv) and (vii) of this subsection; the petition shall be personally served according to court rules, along with notice of the time and place of the hearing under (6) of this section.

- 5. *Emergency Health Department Administrative Order; Enforcement.* Notwithstanding (4) of this section, when the Department has probable cause to believe that the delay involved in seeking a court order imposing isolation or quarantine would pose a clear and immediate threat to the public health and isolation or quarantine is the least restrictive alternative and is necessary to prevent the spread of the COVID-19 virus, a Tribal medical officer in the Department may issue an emergency administrative order to temporarily isolate or quarantine an individual or group of individuals. An emergency administrative order of temporary quarantine or isolation by a Tribal medical officer is enforceable by any Tribal law enforcement officer on the Reservation. Within 24 hours after implementation of the emergency administrative order, the Department shall notify the Tribal Court by filing a petition under (4) of this section that also alleges that the emergency action was necessary to prevent or limit the transmission of the COVID-19 virus to others that would pose an immediate threat to the public health. The petition must be signed by a Tribal medical officer.
- 6. *Right to Hearing; Continuance.* An individual served with a petition under (4) of this section or an emergency administrative order to temporarily isolate or quarantine under (5) of this section has the right to a court hearing. The Tribal Court shall hold a hearing within 48 hours after a petition is filed. The Department may request a continuance of the hearing for up to five days. The Court may grant the continuance for good cause shown and in extraordinary circumstances, giving due regard to the rights of the affected individuals, the protection of the public health, the severity of the need for isolation or quarantine, and other evidence. During a continuance, an isolated or quarantined individual shall remain in isolation or quarantine. The Court may order the consolidation of individual claims into group claims if the number of individuals

affected is so large as to render individual participation impractical, there are questions of law or fact common to the individual claims or rights to be determined, the group claims or rights are typical of the affected individuals' claims or rights, and the entire group can be adequately represented. The public shall be excluded from a hearing under this section unless the individual elects to have the hearing open under (7)(b) of this section.

7. Hearing Procedure. During the hearing, the individual has the right to:
 - a. View and copy all petitions and reports in the court file of the individual's case;
 - b. Elect to have the hearing open to the public;
 - c. Have the rules of evidence and civil procedure applied so as to provide for the informal but efficient presentation of evidence;
 - d. Have an interpreter present if the individual does not understand English;
 - e. Present evidence on the individual's behalf;
 - f. Cross-examine witnesses who testify against the individual;
 - g. Call experts and other witnesses to testify on the individual's behalf; and
 - h. Participate in the hearing; under this paragraph, participation may be by telephone if the individual presents a substantial risk of transmitting the COVID-19 virus to others.

8. Issuance and Enforcement of Order. At the conclusion of the hearing, the Court may commit the individual to isolation or quarantine for not more than 30 days if the Court finds, by clear and convincing evidence, that the isolation or quarantine is necessary to prevent or limit the transmission to others of COVID-19 because it poses a significant risk to the public health. The Court may issue other orders as necessary. Orders are enforceable by a Tribal Law Enforcement officer. The order must:
 - a. Identify the isolated or quarantined individual or group of individuals by name or shared or similar characteristics or circumstances;
 - b. Specify factual findings warranting isolation or quarantine under this section;
 - c. Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this section; and
 - d. Be served on the affected individual or group of individuals in accordance with existing court rules.

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9. Extension of Order. Before the expiration of an order issued under (8) of this section, the Court may continue isolation or quarantine for additional periods not to exceed 30 days upon a showing by the Department by clear and convincing evidence that the action is necessary to prevent or limit the transmission to others of a disease that poses a significant risk to the public health.
10. Show Cause for Termination of Order. An isolated or quarantined individual or group of individuals may apply to the Court for an order to show cause why isolation or quarantine should not be terminated. The Court shall rule on the application to show cause within 48 hours after filing. An isolated or quarantined individual or group of individuals may request a hearing in the Court for remedies regarding breaches of the conditions of isolation or quarantine. A request for a hearing may not stay or enjoin an isolation or quarantine order. Where extraordinary circumstances justify the immediate granting of relief, the Court shall fix a date for hearing on the alleged matters within 24 hours after receipt of the request. Otherwise, the Court shall fix a date for hearing on the alleged matters within five days after receipt of a request.
11. Minors. The provisions of this section apply to minors. All notices required to be served on an individual shall also be served on the parents or guardians of an individual who is an unemancipated minor.
12. Privacy of Quarantined or Isolated Individuals. The Department shall protect, as much as possible, the privacy rights of individuals subject to isolation or quarantine under this section.
13. Penalties for Violation. In addition to any other penalties prescribed in this section, a person who knowingly violates this section or a regulation adopted under this section is guilty of a class B misdemeanor and/or subject to any civil penalties allowed by law, including, as to non-Indians, exclusion from within the exterior boundaries of the Cheyenne River Sioux Reservation; and

BE IT FURTHER RESOLVED, that this Resolution is necessary for the immediate preservation of the public peace, health, safety, and welfare of all residents of the Cheyenne River Sioux Reservation; and

BE IT FURTHER RESOLVED, that these emergency health and safety measures shall remain in effect until such time as they are amended or repealed; and

BE IT FURTHER RESOLVED, that this Resolution shall be effective as of August 4, 2021; and

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BE IT FINALLY RESOLVED, that nothing in this Resolution diminishes, divests, alters, or otherwise affects any inherent, treaty, statutory or other rights of the Cheyenne River Sioux Tribe over the people, property, and activities described herein. The Cheyenne River Sioux Tribe expressly retains all rights and authority over the people, property, and activities described herein, including but not limited to legislative, regulatory, and adjudicatory powers.

CERTIFICATION

I, the undersigned as Secretary of the Cheyenne River Sioux Tribe certify that the Tribal Council is composed of 15 members of whom 13, constituting a quorum, were present at a meeting duly and regularly called, noticed, convened and held this 6th day of August, 2021, Regular Session; and that the foregoing resolution was duly adopted at such meeting by a roll call vote of 11 yes, 0 no, 2 abstaining, and 2 absent.


Ev Ann White Feather, Secretary
Cheyenne River Sioux Tribe