KAYENTA TOWNSHIP
OFFICIAL COMPILATION
ORDINANCES AND REGULATIONS

CHAPTER	TITLE
1	HOME RULE
2	ADMINISTRATIVE RULES AND PROCEDURES
3	ELECTIONS
4	FINANCE AND FISCAL ADMINISTRATION
	Fiscal Policies, Rules, Regulations and Procedures
5	RESERVED
6	RESERVED
7	RESERVED
8	TAX ORDINANCES
	Subchapter 1 Tax Administration
	Tax Administration Regulations
	Subchapter 2 Hotel Occupancy Tax
	Hotel Occupancy Tax Regulations
	Subchapter 3 Business Sales Tax
	Business Sales Tax Regulations

CHAPTER	TITLE
9	LEASING Subchapter 1 Business Site Leasing Business Site Leasing Regulations
10	RESERVED
11	RESERVED
12	CIVIL PUBLIC TRESPASS
13	SOLID WASTE
14	SEX OFFENDER REGISTRATION AND REPORTING
15	ALCOHOL AND CONTROLLED SUBSTANCE
16	ANIMAL CONTROL

CHAPTER 1

KAYENTA TOWNSHIP
HOME RULE ORDINANCE

SECTION 1-101	TITLE
SECTION 1-102	DEFINITIONS
SECTION 1-103	AUTHORITY; SCOPE
SECTION 1-104	NAME
SECTION 1-105	BOUNDARY
SECTION 1-106	COMMISSION; AUTHORITY
SECTION 1-107	COMMISSION OFFICERS
SECTION 1-108	GOVERNMENT STRUCTURE; TOWN MANAGER; DIRECTORS; EMPLOYEES
SECTION 1-109	SEAL
SECTION 1-110	SEVERABILITY
SECTION 1-111	NO WAIVER OF SOVEREIGN IMMUNITY

HOME RULE ORDINANCE

SECTION 1-101 Title

This Chapter shall be cited as the Home Rule Ordinance.

History

The Navajo Nation Council ("Council") approved the "Kayenta Township Pilot Project" pursuant to Resolution CN-86-85 (Nov. 5, 1985), which included authorities for local land use planning and land withdrawals as well as for processing business and home site leases. See 2 N.N.C. §§ 4082, 4084 (1995). This resolution also approved a plan of operation for the pilot project and the appointment of a Kayenta Planning Board to carry out such pilot project.

The Advisory Committee of the Council pursuant to Resolution No. ACN-181-86 (Nov. 13, 1986) approved the withdrawal of 3,606.43 acres, more or less, of Navajo trust lands, to establish the official boundaries of the Township.

The Council pursuant to Resolutions CJA-3-96 (Jan. 19, 1996) and CN-76-96 (Nov. 1, 1996) replaced the appointed Kayenta Planning Board with an elected Kayenta Township Commission and authorized the "Kayenta Tribal Pilot Sales Tax Project." The intent of the local sales tax project was to provide a consistent source of revenue for operation of the Township government. Later, the Council pursuant to Resolution CN-76-96 (Nov. 1, 1996) approved an amendment to the plan of operation of the sales tax project, extending the Township's taxing authority indefinitely.

Finally, the Council pursuant to Resolution CJY-42-03 (July 25, 2003) established the Township as a Home Rule municipality. This resolution was vetoed by the Navajo Nation President on August 8, 2003, but the Council overrode the veto by Resolution CAU-47-03 (Aug. 29, 2003).

KTCMY-27-05 (May 9, 2005). Adopted the Home Rule ordinance.

KTCM-11-13 (March 13, 2013). Amended the ordinance to remove the provisions on "Commission meetings; quorum; parliamentary procedures; open meetings and place them in the Administrative Rules and Procedures Ordinance and to remove the provisions on "Referendum Measures and Initiatives."

SECTION 1-102 Definitions

For purposes of the entire Kayenta Township Code:

A. "KTC" or "Commission" means the Kayenta Township Commission.

B. "Township" means the Kayenta Township.

SECTION 1-103 Authority; Scope

A. The Township, pursuant to 2 N.N.C. §§ 4081-4185, as amended by Navajo Nation Council Resolution CJY-42-03, was established as a home rule municipality on July 25, 2003 to be governed by the KTC, with the KTC having jurisdiction over all that area authorized and designated by Navajo Nation Council Resolution CN-86-85.

B. Pursuant to 2 N.N.C. §§ 4083(c) and 4084, the KTC has the duty, authority, and responsibility to perform all functions necessary for local self government, consistent with all generally applicable laws and regulations of the federal government and the Navajo Nation.

C. As acknowledged by Navajo Nation Council Resolution CJA-1-96, the source of home rule governance is the inherent authority of Navajo communities to govern over local matters.

D. This ordinance is to designate the name of the Township and its metes and bounds, establish and enumerate the fundamental governing authority of the Township and the KTC, prescribe the structure of the government, and provide for making laws by referendum and initiative.

SECTION 1-104 Name

The government, territory and body politic of the Township shall be known as the Kayenta Township.

SECTION 1-105 Boundary

A. The Township shall be that portion of the community of Kayenta bounded as follows:

The Township boundary survey lies within the area that is encompassed by 36°16'00" north latitude to 36°40'00" north latitude and 110°08'00" west longitude to 110°20'00" west longitude, surrounds the area known as Kayenta, Navajo Nation (AZ), and is more particularly described as follows:

Commence at the Navajo Control system brass cap Kay No. 30, which is located 565.255 feet south and 2631.410 feet east of BIA r/w marker found at north side of Highway 160 at station 1026+56.13 approx. 1/3 mile east of highway junction 160 & 163 in Kayenta;

Thence run south 59°47'11" west for 2901.270 feet to the true point of beginning, which is a brass cap stamped KCBS NO. 1,
Thence north 71°57'20" east, 3272.938 feet to KCBS NO. 2,
Thence north 79°18'00" east, 1645.168 feet to KCBS NO. 3,
Thence north 47°29'23" east, 3228.262 feet to KCBS NO. 4,
Thence north 79°06'54" east, 2928.265 feet to KCBS NO. 5,
Thence north 30°22'32" west, 8971.990 feet to KCBS NO. 6,
Thence north 84°42'24" west, 4747.702 feet to KCBS NO. 7,
Thence south 66°09'52" west, 2681.383 feet to KCBS NO. 8,
Thence south 80°24'49" west, 3356.906 feet to KCBS NO. 9,
Thence south 82°17'40" west, 4575.705 feet to KCBS NO. 10,
Thence south 09°24'14" east, 1162.670 feet to KCBS NO. 11,
Thence south 22°04'37" east, 687.773 feet to KCBS NO. 12,
Thence north 67°10'05" east, 1254.370 feet to KCBS NO. 13,
Thence south 13°54'37" east, 1409.019 feet to KCBS NO. 14,
Thence north 70°54'21" east, 1281.889 feet to KCBS NO. 15,
Thence north 55°19'05" east, 2002.332 feet to west right of way marker of Highway 163, which is brass cap in concrete, stamped B.I.A. ROADS, which is also KCBS NO. 17,
Thence south 27°07'03" east along said right of way line for a distance of 2334.738 feet to brass cap in concrete stamped B.I.A. ROADS, which is also KCBS NO. 18,
Thence south 60°49'52" west, 2858.160 feet to KCBS NO. 19,
Thence south 12°35'25" east, 3788.928 feet to KCBS NO. 20,
Thence north 78°41'01" east, 3947.356 feet to KCBS NO. 21,
Thence south 27°16'46" east, 1751.478 feet to KCBS NO. 22,
Thence north 63°36'50" east, 251.877 feet to KCBS NO. 23,
Thence north 61°48'38" east, 811.149 feet to KCBS NO. 24,

Thence north 28°09'11" west, 812.000 feet to KCBS NO. 1.

Said parcel contains 3611.47 acres, more or less.

B. Pursuant to 2 N.N.C. § 4083(B), as amended, the Township boundary is subject to amendment pursuant to Kayenta Township ordinance and the concurrence by the Kayenta Chapter.

SECTION 1-106 Commission; Authority

A. The governmental powers of the Township shall be vested in the KTC.

B. The composition, qualifications, terms, election and other requirements and restrictions on the KTC shall be enumerated in the Kayenta Township Election Ordinance. The roles and responsibilities and rules of order for meetings of the KTC shall be set forth in the Kayenta Township Administrative Rules and Procedures Ordinance.

C. The KTC, for the general health, safety and welfare of the Township, shall have the following general authorities, including, but not limited to:

1. Adopting, amending or repealing ordinances, resolutions, rules and regulations for the governance of the Township; enforcing the observance of such ordinances, resolutions, rules and regulations; punishing violations thereof by fine or imprisonment or both; and classifying such violations as criminal or civil offenses.

2. Acquiring, maintaining and regulating the use of all lands within the boundaries of the Township, including, but not limited to:

   a. Issuing home and business site leases and such other leases, permits and authorizations as the KTC may deem necessary;

   b. Adopting a land use plan and zoning code; and

   c. Acquiring property by eminent domain.

3. Controlling of all finances of the Township, including but not limited to:

   a. Acquiring, generating, administering and appropriating money and providing for the payment of debts and expenses.

   b. Adopting an annual budget;

   c. Borrowing money and incurring indebtedness on behalf of the Township; causing to be executed and delivered for its purpose, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and such other evidence of debt and securities;

d. Opening bank accounts and protecting and investing the Township's assets;

e. Entering into agreements, contracts and sub-contracts for funds from the Navajo Nation, other Indian nations and federal, state or county governments;

f. Levying taxes; and

g. Establishing fees and assessments.

4. Providing the Township with:

   a. Water facilities, public wells, cisterns, reservoirs and such pumps, pipelines or ditches as are necessary within the Township, or beyond its limits thereto;

   b. Sewers and drains;

   c. Electricity lines;

   d. Streets, sidewalks, bridges, culverts, crossways and streetlights;

   e. Landfills and trash removal facilities, where and when feasible; and

   f. Public buildings and facilities.

5. Entering into contracts and agreements for the provision of goods and services to the Township.

6. Entering into agreements with chapters, municipalities, townships, Navajo Nation, other Indian Nations, and federal and state governments and their agencies and subdivisions.

7. Establishing such dispute resolution systems as deemed appropriate to resolve disputes and claims arising from Township legislative, executive or judicial actions, including the establishment of alternative resolution systems, arbitration, courts and administrative procedures; and waiving the sovereign immunity of the Kayenta Township in accordance with the Navajo Sovereign Immunity Act, 1 N.NC. §551 *et seq*. and the Navajo Nation Arbitration Act, 7 N.NC. §1101 *et seq*.

8. Establishing and maintaining systems for the licensing of businesses, professions, and other activities within the Township.

9. Establishing such offices, departments, boards, committees or commissions and personnel positions as deemed necessary; prescribing the duties and compensation of the Town Manager; adopting personnel policies and procedures to regulate employee hiring, supervision, discipline, termination and work place activities; adopting other policies and procedures that generally affect all employees; and appointing from time

to time officers and agents of the Township whose appointment is not provided for in this Chapter, and removing them, if necessary.

10. Constructing, purchasing or leasing necessary buildings and offices for the benefit of the Township.

11. Prescribing a daily compensation, stipend or salary to be paid the Commissioners and administrative board or committee members for the performance of official duties.

12. Prescribing per diem, stipend or reimbursement for expenses incurred by the Commission on official business, including necessary travel expenses, meals and mileage.

SECTION 1-107 Commission Officers

A. Officers of the KTC shall consist of the Chairperson, Vice-Chairperson and Secretary elected from, and by, the Commissioners.

B. The Officers shall have the following duties and such other duties as may be determined by the KTC:

   1. The Chairperson shall preside at all meetings and shall perform all duties incident to the office of the Chairperson.

   2. The Vice-Chairperson shall act in the capacity of Chairperson in the absence of the Chairperson, and shall discharge any other duties designated by the Chairperson.

   3. The Secretary is the recording officer of the KTC and the custodian of its records, and as such, shall keep a journal of KTC proceedings and a record of all ordinances and resolutions adopted. The Secretary shall ensure that an electronic recording is made of all KTC meetings and shall ensure that written minutes are timely prepared and kept of all KTC meetings.

C. The Officers shall be elected for two years or as soon as newly elected Commissioners are sworn in.

D. Sections 2-104 and 2-105 of the Administrative Rules and Procedures Ordinance contain the rules of order and procedure for holding Commission meetings and Section 2-106 contains the rules and standards of conduct for the Commission.

SECTION 1-108 Government Structure; Town Manager, Directors; Employees

A. The KTC shall act only as a policy-making body and provide overall governance in accordance with the Township ordinances and regulations.

B. The KTC shall, by resolution, establish all offices, departments, boards, commissions, enterprises and authorities, and review and approve the reorganization of such entities from time to time. The KTC shall approve an organizational chart depicting such entities, which chart shall serve as the official structure of the Township government. The organizational chart shall be reviewed, and amended if deemed necessary, during the annual budget process.

C. The KTC shall review and approve, by resolution, the job descriptions and qualifications for the Town Manager and all Department Directors. The KTC shall, in consultation with the current Town Manager, develop the job description and qualifications for the Town Manager's position. The Town Manager shall, in consultation with the department directors, develop the job descriptions and qualifications of all department directors and employees.

D. The KTC shall appoint a Town Manager to serve as the chief executive officer of the Township and such appointment shall be made through a written employment agreement prepared by the KTC's legal counsel.

E. The Town Manager shall have full authority to hire, supervise, discipline and terminate the employment of all Department Directors and employees in a manner prescribed by the Township Personnel Policies and Procedures and to fix their compensation. The department directors shall supervise and control their departments, subject to the general control and direction of the Town Manager and the Township's Personnel Policies and Procedures.

SECTION 1-109 Seal

SECTION 1-110 Severability

For purposes of this entire Code and unless otherwise specified by law, the provisions of this Code or any ordinance therein are severable and if any provision of this Code or ordinance, or its application to any person or circumstance is held invalid by a final unappealable judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Code or ordinance or its applicability to any other person or in any other circumstance.

SECTION 1-111 No waiver of Sovereign Immunity

Nothing in the entire Code of this Ordinance is intended, nor shall it be construed, to waive the sovereign immunity of the Kayenta Township or any of its Commissioners, officials, employees or agents. Any waivers of sovereign immunity must be in writing and in accordance with KTC and Navajo laws and procedures.

CHAPTER 2

KAYENTA TOWNSHIP
KTC ADMINISTRATIVE RULES AND PROCEDURES ORDINANCE

SECTION 2-101	TITLE
SECTION 2-102	DEFINITIONS
SECTION 2-103	SCOPE; POLICY; AUTHORITY OF THE COMMISSION
SECTION 2-104	PROCEDURES FOR HOLDING COMMISSION MEETINGS
SECTION 2-105	RULES OF ORDER AND PROCEDURE FOR HOLDING COMMISSION MEETINGS
SECTION 2-106	RULES AND STANDARDS OF CONDUCT FOR THE COMMISSIONERS
SECTION 2-107	LEGISLATION

KTC ADMINISTRATIVE RULES AND PROCEDURES ORDINANCE

Section 2-101 Title

This chapter shall be cited as the KTC Administrative Rules and Procedures Ordinance.

History

KTCMY-28-05 (May 9, 2005)
KTCJN-19-12 (June 11, 2012) (Repealed KTCMY-28-05 and replaced the Administrative Procedures Ordinance in its entirety)

Section 2-102 Definitions

1. "Code" means the Kayenta Township Code of Ordinances.

2. "Commission" or "KTC" means the Kayenta Township Commission.

3. "Preamble" means a statement accompanying the proposed ordinance that includes: (a) the name and address of the Township personnel with whom persons may communicate regarding the ordinance; (b) an explanation of the ordinance, including the reasons for initiating the ordinance; (c) a statement of the ordinance's effective date; and (d) if enacted as an emergency measure, an explanation of the situation justifying the emergency and a statement of the emergency ordinance's effective date.

4. "Regulation" means [LME to Provide]

5. "Resolution" means the formal written expression of opinion or intention made by the Commission after taking a vote.

6. "Rule" means the Commission's statement of general applicability that implements or interprets law or policy as expressed in an ordinance, or describes the procedures or practice requirements of the Commission. A rule can include one prescribing fees of the amendment or repeal of a prior rule.

7. "Township" means the Kayenta Township.

Section 2-103 Scope; Policy; Authority of the Commission

A. **Scope; Policy.** This ordinance establishes the rules and procedures which implement or interpret the law and policy as expressed in an ordinance or describes the procedures or practice requirements of the Kayenta Township. It also outlines the rules and procedural requirements for holding Commission meetings.

B. **Authorities.** The authorities of the Commission and its officers are outlined in Sections 1-106 and 1-107 of the Home Rule Ordinance, respectively.

Section 2-104 Procedures for Holding Commission Meetings

A. **Regular Meetings.** The Commission shall meet regularly at least once a month. The Commission by majority vote shall fix the time and place of such meetings.

B. **Special Meetings.** The Chairperson of the Commission may call special meetings as necessary upon request of a majority of the Commissioners.

C. **Emergency Meetings.** The Chairperson of the Commission, upon determining that an emergency exists, may call an emergency meeting on whatever notice is possible, if an emergency affects the general public of the Township. An emergency is defined to include an unexpected occurrence or condition, or the state resulting therefrom, which may require immediate consideration or action by the Commission.

D. **Work Sessions.** The Chairperson of the Commission or the Town Manager may call work sessions meetings as necessary. Resolutions or legislation shall not be adopted at such meetings.

E. **Public Meetings.** All regular and special meetings of the Commission shall be open to the public. All regular and special meetings shall be held in the Commission Chambers of the Kayenta Township, commencing at 5:30 pm, unless changed or cancelled by majority vote of the Commissioners.

F. **Public Hearings.** Public hearings may be scheduled periodically as required by the Commissioners or as required by law to hear the public's views or concerns about a proposed Township action or project.

G. **Notice.** Notice of meetings to the Commissioners notice shall be delivered not less than seventy-two (72) hours before the date of the meeting, either personally or by mail or by other reliable and verifiable means of delivery, including written electronic communication. In addition, public notice in writing shall be required for all regular and special meetings. Notice shall be posted on the entrance to the Kayenta Township office and on a bulletin board within the Kayenta Township office at least forty-eight (48) hours prior to a regular meeting and at least twenty-four (24) hours prior to a special meeting. The notice must include the date, time and place of meeting and the proposed agenda. Notice requirements do not apply to emergency meetings or workshops.

H. **Proposed Agenda and Resolutions.** The proposed agenda for all meetings shall be developed jointly by the Chairperson and Town Manager. The proposed agenda and all proposed resolutions with attached exhibits and supporting documents shall be:

1. Distributed to the Commission at least seventy-two (72) hours prior to the meeting; and

2. Reviewed by legal counsel and the Finance Manager prior to consideration by the Commission; such review shall indicate the impact, if any, the proposal will have on the Township and contain a recommendation.

I. **Quorum.** A simple majority of the Commissioners constitutes a quorum for the conduct of any meeting.

J. **Voting.** All actions of the Commission shall be by majority vote of the Commissioners present at a meeting. No proxy, mail, facsimile, telephonic, electronic or absentee vote may be cast. The vote on every question shall be recorded in the minutes.

K. **Recordkeeping.**

1. Recording. All regular and special meetings of the Commission and public hearings shall be recorded.

2. Minutes and Records. The minutes of regular and special meetings shall be prepared no later than seven (7) days after a meeting and distributed to each Commissioner at least seventy-two (72) hours prior to the meeting when such minutes will be adopted. Minutes do not constitute the official record of a meeting until approved by the Commission. Minutes shall not be distributed to others until approved by the Commission. All Township records required to be recorded or transcribed are valid if typewritten, printed, photostated or microfilmed. The minutes of any proceedings of the Commission may be recorded in a bound book or binder book. Any records, attachments or transcribing added to the record book must bear the official Township seal impressed on the front of the document.

3. Resolutions. All approved resolutions shall be signed by the Commissioner who presided at the meeting when such resolutions were adopted.

4. Contracts and Agreements. The Commission shall designate the Chairperson, Town Manager or other representative to sign all contracts and other agreements approved by the Commission on behalf of the Township.

L. **Compensation.** Subject to applicable law and the fiduciary duties owed by the Commissioners, the Commissioners shall have the authority to fix their compensation in consultation with the Town Manager. The Commissioners may be paid a fixed sum for attendance and their expenses, if any, for each meeting of the Commissioners, and for committee meetings, workshops, seminars and other meetings. The payment of compensation and reimbursement of expenses shall be based on the "Kayenta Township Commission Policies and Procedures for Reimbursement of Travel Expenses and Stipends" prepared and maintained by the Township, which may be updated from time to time by resolution of the Commissioners.

Section 2-105 Rules of Order and Procedure for Holding Commission Meetings

Rule 1. Purposes

The purposes of these rules of order and procedure are to provide for the orderly, efficient and expeditious meetings of the Commission, protecting the right of each Commissioner to participate in the governance of the Township, and providing access to the public to submit their views and concerns to the Commission.

Rule 2. Chairperson

The Chairperson shall:

1. preside over all Commission meetings in accordance with these rules and procedures;
2. rule on all points of order;
3. not vote unless there is a tie;
4. refrain from making motions or seconds;
5. be on time for meetings;
6. follow the agenda;
7. be familiar with the rules of order and procedure;
8. run the meeting firmly and courteously;
9. maintain order and decorum;
10. require a Commissioner to be recognized before speaking;
11. allow only one person at a time to speak;
12. allow only one main motion on the floor;
13. require motions to be stated affirmatively;
14. allow discussion only after a motion is seconded and restated by the Chairperson;
15. allow the maker of a motion to speak first;
16. allow a Commissioner to speak a second time on a matter only after all other Commissioners have had an opportunity to speak;
17. require Commissioners to vote clearly without explanation;
18. allow interruption of a speaker only by consent or for permitted reasons (e.g., point of order; question of privilege);
19. reject discussion of motions which are not debatable (e.g., previous question, table, adjourn);
20. reject frivolous motions and motions not permitted by the rules;
21. apply time limits uniformly and fairly;
22. rule remarks involving personalities or attack motives by any person as out of order;
23. have the discretion to determine and rule (call of the question) that adequate time has been allowed for the discussion on any item and that debate shall cease;
24. have the discretion to determine and rule that a Commissioner, a sponsor or a member of the public is not addressing the matter at hand or is exceeding the reasonable time limits of a debate or presentation and that the person is out of order and must cease talking;

25. have the discretion to recognize a member of the public to participate in the discussion by the Commissioners on any item;
26. consult legal counsel for advice but not a ruling (as only the chair can rule); and
27. deal firmly with disruptions.

Rule 3. The Order of Agenda Business

The order of agenda business shall be as follows:

1. Call to order
2. Roll call
3. Invocation
4. Recognize guests
5. Review and adopt agenda
6. Adoption of minutes
7. Reports
8. Old business
9. New business
10. Commissioners present announcements
11. Call to the public
12. Adjournment

Rule 4. Adoption of Agenda

1. The Chairperson and the Town Manager shall present the agenda.
2. Any Commissioner may move to adopt the agenda; the motion must be seconded.
3. Any Commissioner may move to add or delete an item; the motion must be seconded.
4. Once the agenda is adopted, it shall not be amended to add any item of business unless the motion is approved by a 2/3 vote of those present.

Rule 5. Reading of Legislation or Resolution

1. The Chairperson, or his designee, shall read twice all proposed ordinances or resolutions. In the first reading, the entire ordinance or resolution shall be read, unless the Commission, by consensus or vote, decides to waive the reading of all or part of the ordinance or resolution.
2. After the first reading, the Chairperson shall entertain a motion to adopt.
3. After all motions to amend have been voted upon, there shall be a second reading. The second reading shall be limited only to those provisions of the ordinance or resolution that have been amended.
4. The Chairperson shall put the matter to vote without further debate upon completion of the second reading.

Rule 6. Presentation by Sponsor(s)

1. The sponsor(s) shall present (written and/or oral) the agenda item.

2. All questions shall be directed through the Chairperson to the sponsor.
3. Only upon recognition by the Chairperson shall the sponsor address the Commission.

Rule 7. Main Motion

1. After the first reading, the Chairperson shall entertain a motion to adopt. A second to the motion shall make no stipulation on the main motion. A motion and second shall commence the presentation by the sponsor(s).
2. If there is no second, the motion is void.
3. After the conclusion of the New Business section of the agenda, the Chairperson shall strike from the agenda all proposed ordinances or resolutions that did not receive a second.

Rule 8. Amendment to Main Motion

1. Any Commissioner (except parties to the main motion) may move to amend the main motion. An amendment to the main motion shall only amend a portion of the main motion and not its entirety.
2. A motion to amend the main motion must be seconded, with no stipulation.
3. A motion to amend the main motion shall take precedence over the main motion; the Chairperson shall allow debate of the motion to amend prior to resuming debate on the main motion. If the motion to amend is approved, the debate of the main motion shall continue as amended.
4. Only one motion to amend shall be allowed at any given time.

Rule 9. Withdrawal or Modification of Motion and Withdrawal of a Second

1. A Commissioner may withdraw or modify a motion made by that Commissioner if the request is made before any amendment to the motion is approved, and if the Commissioner who seconded that motion agrees and there is no objection from any other Commissioner, and the Chairperson grants permission.
2. If there is any objection to the withdrawal or modification, the Commissioner may seek withdrawal or modification by motion. The motion to withdraw or modify shall take precedence over the motion it seeks to withdraw or modify, is not subject to debate, and cannot be amended.
3. A Commissioner may withdraw a second made by that Commissioner if the request is made before any amendment to the motion is approved and the Chairperson grants permission.

Rule 10. Tabling Motion

1. A motion to table shall take precedence over all other motions. The tabling motion shall be seconded and is not subject to debate.
2. A motion to table must include specific directive(s) on when the agenda item will be reconsidered.
3. An agenda item that has been tabled twice shall be removed from the agenda.

4. An agenda item must be taken up from the table by motion and must be seconded. A motion to take up an item from the table is not debatable.
5. Any agenda item not taken up in this manner within the time set by the tabling motion shall be deemed to have expired and the Chairperson shall remove it from the agenda.

Rule 11. Vote

1. Unless otherwise required by these rules or by Navajo Nation or Township law, all motions shall be approved if it received a majority of all votes cast.
2. Every Commissioner shall vote in favor, oppose or abstain on each motion. A Commission not voting shall be deemed to have abstained from the motion.
3. Abstentions shall be counted as part of the total number of votes cast and shall be counted for purposes of a quorum.
4. Abstentions shall be deemed as an expression of the voter that he or she will accept the result of the vote; therefore, abstentions shall be counted as part of the votes cast in favor of a motion.
5. Commissioners who have economic interest distinguishable from that of the general public, or have family interest, in any matter shall disclose the nature and extent of such interest to the Commission and shall not participate in any proceeding concerning the matter, including debate, and shall not vote on the matter. Commissioners with such interest shall be counted for purposes of a quorum.
6. Voting by proxy or by any method by or on behalf of any Commissioner who is not physically present shall be prohibited and such votes shall be void.

Rule 12. Recall of Vote

1. Any Commissioner voting with the prevailing side of any motion may move to recall the vote on any previously considered motion. Any Commissioner may second the motion.
2. A motion for recall of vote must be made during the same meeting in which the original motion was voted upon. A motion for recall of vote shall not be valid to reconsider a matter from any prior meeting.
3. A motion for recall of vote shall not apply to any motion to adjourn, to table or take from the table, to suspend the rules, or to an amendment motion when a vote on the main motion has already been taken, unless the vote on the main motion is first successfully recalled pursuant to this rule.
4. No vote on a motion may be reconsidered more than once on a motion for recall of vote, unless the motion was amended after reconsideration.
5. A motion for recall of vote shall be made only when no other motion is pending.
6. If approved, the motion for recall of vote places the motion subject to reconsideration in the same position it occupied before being originally voted upon.

Rule 13. Executive Session

1. Any Commissioner may move to have the Commission resolve itself into an executive session to discuss any item on the adopted agenda.

2. A motion for an executive session shall take precedence over any main motion, motion to amend and a motion to recall vote.
3. If the motion is approved, the Chairperson shall direct the meeting room be cleared, except for such personnel as the Chairperson may deem necessary.
4. During the discussion in executive session, there shall be no recording and the doors shall remain closed.
5. No official action shall be taken while in executive session.
6. By law, Commission meetings are open to the public; therefore, executive sessions shall be limited to the following situations:
   a. Discussion with legal counsel is necessary with regard to litigation or a matter before any tribunal.
   b. Discussion of employment, appointment, compensation, promotion, demotion, discipline or dismissal of an employee or public official, or the investigation or charges and complaints against an employee or public official.
   c. Discussion regarding the development of security personnel or devices.
   d. Investigative proceedings regarding allegations of criminal misconduct.
   e. Discussion is necessary with regard to business negotiations with other parties.

Rule 14. Suspension of Rules

1. In order to discuss a matter without formal rules so that time is not wasted and a discussion can be conducted more efficiently, any Commissioner may move to temporarily suspend a rule or rules of the Commission.
2. The motion must specify the rule(s) to be suspended and how long such rule(s) shall be suspended.
3. The motion may apply to a particular matter or to all business during any meeting.
4. The motion must be approved by a two-thirds vote.

Rule 15. Point of Order

1. Any Commissioner may raise a point of order to argue that a motion, procedure or remark appears to be in violation of the rules.
2. The point of order shall be raised immediately after the error is made. The moving party may interrupt a speaker and a vote in progress to raise the point of order.
3. The point of order is not subject to debate. The Chairperson shall immediately rule upon the point of order before any action is taken on the agenda item.
4. Any Commissioner may appeal the Chairperson's ruling. The appeal must be seconded. The appeal shall not be amended.
5. If the appeal is made and seconded, the Chairperson shall restate his ruling and the ruling shall then be subject to debate, during which the Chairperson may state his reason for the ruling.
6. Upon conclusion of the debate, a vote shall be taken. The Chairperson's ruling shall be reversed if the appeal is approved.

Section 2-106 Rules and Standards of Conduct for the Commissioners

A. **Attendance.** An excused absence is one due to the death of a family member, illness of the Commissioner or a member of his or her family, a meeting conflict or a vacation. If reasonably possible, a Commissioner shall notify the Chairperson well in advance of the fact that he or she will be unable to attend a Commission meeting and the reason for his or her absences. The record of the meeting will state the fact that the Commissioner is absent from the meeting and the reason for the absence. The remaining Commissioners may at that point vote to excuse the Commissioner from the meeting. Unexcused absences from three (3) consecutive meetings of the Commission may be cause for removal from office in accordance with Section 2-106(E).

B. **Fiduciary Duties.** Each Commissioner, by accepting his or her position as a member of the Commission, affirms his or her understanding that he or she sits as such in a fiduciary capacity in relation to the Township, and agrees to conform his or her conduct to the most exacting fiduciary standards, including without limitation the duties to act in the best interest of the Township, to refrain from self-dealing and to maintain the confidentiality of the Township's documents, data, plans, strategies, personnel matters, financial status and reports, and similar confidential or proprietary matters, subject to the requirements of applicable Navajo and federal law. Violations of these standards shall constitute grounds for expulsion from the Commission of Commissioners and civil, or, in some instances, criminal actions in the courts of the Navajo Nation or the United States of America.

1. Commissioners have both collegial responsibilities and individual responsibilities, which are summarized below:

   a. Meeting room responsibilities:

      To "govern" implies bringing experience and relationships to the Township to promote its best interest. It implies becoming informed, participating, asking questions and applying considered business judgment to matters coming before the Commission as a whole.

      Primary consideration should be given to economic considerations. However, Commissioners must appreciate public expectations, and take into consideration law, public policy and ethics. Commissioners may consider the effect of their actions on their constituencies and the best interests of the Township.

   b. Individual responsibilities:

      Each Commissioner must individually become familiar with the Township's business and environment to be effective. This includes the Township's principal operational, financial and other plans, strategies and objectives; the results of operations and the financial condition of the Township; and its standing within the Navajo Nation governmental structure. Commissioners must be able to make

individual evaluations of executive management performance and to join with other Commissioners to formulate challenges and rewards for management.

Thus, the Township must ensure systems for the timely dissemination of information to the Commission, such as current objectives and plans; financial statements, with appropriate breakdowns; systems of controls; material litigation; and regulatory matters. Commissioners should review minutes and reports of committees in advance of Commission meetings.

2. The baseline standard of the performance of a Commissioner's duties requires that the Commissioner act in good faith and in the manner the Commissioner reasonably believes to be in the best interest of the Township. "Good faith" implies honesty, fair dealing and no personal benefit. A Commissioner's "reasonable belief" is an objective test, based on a rational analysis of the situation after consideration of sufficient and reliable information.

3. The Commissioners act as fiduciaries of the Township, and are subject to traditional fiduciary standards of conduct, primarily the duties of care, loyalty, candor and confidentiality.

   a. The duty of care requires a time commitment and regular attendance at duly called meetings. It also requires that the Commissioner inform himself or herself of the facts so that decisions are made prudently. The Commissioner has a right to rely on others, where a reasonable person would do so, but must make inquiries if conditions suggest a need for further information.

   b. The duty of loyalty requires that a Commissioner not involve himself or herself in an apparent or real conflict of interest or appearance of impropriety. The Commissioner must make business opportunities initially available to the Township. Documentation of disclosures of potential conflicts should be preserved in minutes and otherwise, and independent advice should be obtained in appropriate instances.

      No Commissioner may knowingly use his office to gain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. No Commissioner may make, participate in making or influence a governmental decision in which he or his business has an economic interest. The following actions are required for an official to disclose an economic interest:

      i. The Commissioner shall prepare a written statement describing the matter requiring action and the nature of the potential conflict of interest.
      ii. The Commissioner shall furnish a copy of the statement to the presiding officer of the Commission.
      iii. The presiding officer shall direct the statement to be printed in the minutes.

iv. The Commissioner shall be excused from any votes, deliberations and other actions on the matter. There is no requirement that a disqualified Commissioner leave the meeting room, unless requested to do so by the other Commissioners in order to have a candid discussion.

v. The disqualification and the reasons for it are noted in the minutes.

c. The duty of candor requires that all relevant information be fairly presented and that the Commission never misleads or misinforms the Township or public.

d. The duty of confidentiality requires that a Commissioner keep confidential all Township documents and matters and discussions of and materials presented in Commission meetings. which are not disclosed to the public.

Commissioners may from time to time, become privy to confidential information which shall remain confidential. No Commissioner shall disclose or use, without appropriate authorization by the majority of Commissioners, any information acquired in the course of his or her official duties which has been clearly designated by the majority of Commissioners to him or her as confidential. Such confidential designation is warranted whenever the status of the proceedings, the circumstances under which the information was received or the nature of the information necessitates that its confidentiality is necessary to the proper conduct of governmental business. Commissioners may, during a regular, special or other meeting, move into executive session for the purposes and in the manner described by this Ordinance. No Commissioner or other person in attendance shall divulge the nature of discussions or any information obtained during any such executive session or any information received in any confidential communication whether or not same was obtained during the course of any such meeting.

4. The business judgment rule protects Commissioners from liability if a decision turns out bad, where the Commissioner acted on an informed basis, in good faith and in the honest belief that the decision was in the Township's best interest. Commissioners must always comply with applicable law, which, within the Navajo Nation, includes standards imposed under Navajo custom and tradition. If a Commissioner has a strongly held view that a Commission decision is not in conformity with all applicable laws and/or standards or that the disclosures are misleading or false, such Commissioner must first encourage correction action, register a formal dissent for preservation in the Township's records if no corrective action is taken, and consider resigning in appropriate instances.

C. Behavior and Decorum. All Commissioners should:

1. Review documents in advance of meetings and be familiar with issues on the agenda.
2. Follow parliamentary procedures and honor the role of the Chairperson in conducting meetings and maintaining order. Be familiar with meeting rules and procedures.
3. Refer to one another formally during public meetings, using a title and the last name of the individual. Extend the same courtesy to the public.

4. Fully participate in meetings and other public forums.
5. Be respectful of other people's time. Actively Listen. Stay focused and act efficiently during meetings.
6. Demonstrate honesty and integrity in every action and statement and demonstrate respect, kindness, consideration and courtesy to all persons.
7. Practice civility and decorum in discussion and debates: not make any personal comments or make personal attacks against other Commissioners. employees or other individuals.
8. Ask for clarification but avoid debate and argument during meetings or with the public.
9. Participate in scheduled activities to enhance team effectiveness and demonstrate effective problem-solving approaches.
10. Be careful in composing written correspondence. notes. email and voicemail and recognize the relative insecurity of each method.
11. Diligently represent the Township; not misrepresent or make promises on behalf of the Township.
12. Continue respectful behavior in private settings.
13. Leave the day-to-day administrative functions to the Town Manager.
14. Not micro-manage Township activities or staff.
15. Not attend meetings on behalf of the Township unless authorized by the Commission or Chairperson and not attend meetings with Township staff unless requested by the Town Manager.
16. Not disrupt Township staff from conducting their jobs or "direct" Township staff to do or attend to certain things.
17. Treat all staff and other Commissioners as processionals.
18. Never publicly criticize an individual employee or another Commissioner.
19. Check with the Town Manager on outgoing correspondence prior to taking action.
20. Not ask for favors or solicit political support from employees.

D. Discipline. Any Commissioner may be subject to discipline by the remaining Commissioners for disorderly conduct, violation of Commission rules or this Ordinance, or absence without a valid excuse for more than three (3) consecutive meetings. Discipline may be in the form of a public or private reprimand.

E. Resignation and Removal. Any Commissioner may resign at any time by giving written notice to the Chairperson, and such resignation shall be effective on the date specified in the notice. Any one or more of the Commissioners may be removed for cause at any time in accordance with the Navajo Nation Election Code of 1990, 11 N.N.C. § 241.

Section 2-107 Legislation

A. Ordinance Code.

1. All duly enacted ordinances shall be compiled. revised. indexed and arranged as a comprehensive ordinance code. The initial ordinance code shall be adopted by

resolution of the Commission without the publication or readings required for ordinances.

2. The code shall contain the full text of each ordinance.

3. The code shall be available for single copy purchase. The code shall be made available for public review at the Township office.

B. Organization and Format Code.

1. The code shall be organized into chapters and sections.

2. Each code section shall be numbered in two parts, separated by a dash. The figure before the dash shall be the chapter number and figure following the dash shall be the section number.

C. Notice of Proposed Ordinance, Amendment or Repeal; First Reading.

1. Before enacting an ordinance, or the amendment or repeal thereof, the Commission shall authorize the Town Manager to post a notice of the proposed action in least at three public places, such as the Township office, Chapter House, the Post Office or other public places. Notice may also be posted on the Township website. The notice shall include:

   a. The preamble
   b. The exact wording of the ordinance.

B. At the meeting, when the notice is being authorized, the entire proposed ordinance, or the amendment or repeal thereof, shall be read, unless the Commission, by consensus or vote, decides to waive the reading of all or part of the ordinance. This shall constitute the first reading.

D. Public Participation; Written Statements.

1. The Town Manager and Commission may meet formally with any interested party for the purpose of discussing the proposed ordinance or rule. The Town Manager and the Commission may solicit comments, suggested language or other input on the proposed ordinance or rule.

2. For at least thirty days after the public notice of the proposed ordinance making, the Commission shall afford persons the opportunity to submit written statements, arguments, date and views.

3. The Commission, at its discretion, may authorize a public hearing on a proposed ordinance or rule; hearings shall be conducted pursuant to rules promulgated by the Commission.

E. Times and Manner of Enacting an Ordinance; Second Reading.

1. The Commission may not consider a proposed ordinance until the time period for public comment has elapsed.

2. Before submitting an ordinance to the Commission for its consideration. the Town Manager shall prepare a package for review by the Commission. The package shall contain:

   a. The Preamble.
   b. The exact words of the ordinance, including to the extent possible or practicable by overstriking the deletion of existing language and underscoring of new language.
   c. A concise explanatory statement.
   d. The written submissions.

3. The Commission shall conduct a second reading of the proposed ordinance. The second reading shall be limited to all changes made after the first reading.

4. The Commission shall enact all ordinances by written resolution.

F. Manner of Adopting a Regulation or Rule.

1. The requirements of posting public notice and a time period for comment for enacting an ordinance shall not be required for adopting a rule.

2. The Commission may not consider a proposed rule until the proposed rule has been read twice into the Commission meeting record at a regular or special Commission meeting.

3. The reading of the exact words of the rule shall constitute the first reading. unless the Commission, by consensus or vote, decides to waive the reading of all or part of the rule.

4. The reading of any changes to what was read into the record at the first reading shall constitute the second reading. The second reading of the rule shall be conducted at any subsequent meeting after the first reading.

5. The Commission shall enact all rules by written resolution.

G. Emergency Measure, Amendment or Repeal.

If the Commission makes a finding that an ordinance or rule is necessary as an emergency measure, the ordinance may be enacted, amended or repealed as an emergency measure, without the notice prescribed by Section 2-107(C) and the rule may be adopted, amended or repealed as an emergency measure, without the second reading

prescribed by Section 2-107(F). The Commission may not approve the making, amendment or repeal of an ordinance or rule as an emergency measure if the emergency situation could have been averted by timely compliance with the notice, second reading and public participation provisions of this chapter, unless the Town Manager submits substantial evidence that the ordinance is necessary as an emergency measure to do any of the following:

1. Protect the public health, safety and welfare.

2. Comply with deadlines required for amendments to the Township's governing law or required by Navajo, state or federal programs.

3. Avoid violation of Navajo or federal law or regulation.

4. Avoid an imminent budget reduction.

5. Avoid serious prejudice to the public interest or the interest of the parties concerned.

H. Invalidity of Ordinances or Rules not Made in Accordance with this Chapter.

An ordinance is invalid unless it is made and approved in substantial compliance with sections 2-107(C) through (F), unless otherwise provided by law.

I. Effective Date of Ordinances and Rules.

An ordinance or rule (or any subsequent amendment) becomes effective on the date specified in the resolution or when a certified original and two copies of the resolutions enacting the ordinance or rule is executed by the Chairperson of the Commission and filed in the Township office, unless some other date is required by law or specified in the ordinance or rule.

KAYENTA TOWNSHIP
EST. 1986

CHAPTER 3

KAYENTA TOWNSHIP ELECTIONS ORDINANCE

SECTION 3-101	TITLE
SECTION 3-102	DEFINITIONS
SECTION 3-103	COMMISSION; TERM
SECTION 3-104	QUALIFICATION OF COMMISSIONERS; OATH; RESTRICTIONS
SECTION 3-105	ELIGIBILITY TO VOTE IN TOWNSHIP ELECTIONS
SECTION 3-106	APPLICABILITY OF GENERAL ELECTION LAW
SECTION 3-107	REGISTRATION OF PERSONS ENTITLED TO VOTE
SECTION 3-108	CANCELLATION OF A PRIMARY ELECTION

ELECTIONS ORDINANCE

SECTION 3-101 Title

This Chapter shall be cited as the Kayenta Township Election Ordinance.

History

KTCO-37-03 (Oct. 26, 2003)

SECTION 3-102 Definitions

A. "Reside" means having a home within the boundaries of the Township where one lives (sleeps and eats).

1. For purposes of this definition, neither mere possession of a homesite lease without a home thereon, nor possession of a grazing permit, nor being employed or owning a business within the Township while living elsewhere, nor enrolling children in a school within the Township while living outside the Township qualifies a person under this residency requirement.

2. Furthermore, having another home outside the Township boundaries where one also lives (*e.g.*, where one keeps livestock or where one lives on days when not working) does not disqualify a person from this residency requirement. In such a situation, if there is a question as to whether or not one resides within the Township, the facts of whether one has a homesite lease within the Township, or whether one is employed within the Township, or whether one's children attend school within the Township shall be factors in favor of Township residency.

3. Absence from the Township for the purpose of attending school (academic or vocational) or serving in the military does not disqualify a person from this residency requirement.

SECTION 3-103 Commission; Term

A. The KTC shall consist of five Commissioners. Except for the 2004 election as noted in Subsection B of this section, every Commissioner shall hold the office for a term of four (4) years.

B. The terms of the Commissioners shall be staggered; this staggered term system shall commence in the year 2004 when the current terms of the present Commissioners expire. In the year 2004, two (2) Commissioners shall be elected for two (2) years and three (3) Commissioners shall be elected for four (4) years. Thereafter, these two groups of two (2) Commissioners and three (3) Commissioners shall be elected every two years for four (4) year terms.

C. Immediately after the 2004 election. those elected shall draw lots to determine which two (2) Commissioners shall serve two (2) years and which three (3) Commissioners shall serve four (4) years.

SECTION 3-104 Qualification of Commissioners; Oath; Restrictions

A. To be a Commissioner a person, at the time of declaration of candidacy, must:

1. Be twenty-five (25) years old;
2. Reside within the Township;
3. Be a registered voter in Navajo Nation elections in the Kayenta Chapter election precinct (No. 26) and is a registered voter in the Township election precinct (No. 26a);
4. Be a high school graduate (with a diploma or GED);
5. Not have been convicted of an offense (criminal or civil) within the last ten (10) years involving:
   a. Deceit, untruthfulness and dishonesty, including extortion, embezzlement, bribery, perjury, forgery, fraud. misrepresentation, theft, conversion, or misuse of public or private funds or property;
   b. Aggravated assault. aggravated battery or sexual misconduct; or
   c. Use or possession of illegal drugs; and
6. Not have been convicted of a felony within the last ten (10) years.

B. Before starting the duties of the office, each Commissioner shall take the oath of office.

C. No person shall serve as a Commissioner if she or he:

1. Holds any other elective office of:
   a. The Navajo Nation or any political subdivision thereof;
   b. Any state or any political subdivision thereof;
   c. The United States government;
   d. For purposes of this subsection (C)(1), serving on a school board (whether elected or non-elective) is exempt from this restriction; any school board member can serve as a Commissioner.
2. Is a Judge in any court.

D. These qualifications shall be effective in the year 2004 when the current terms of the present Commissioners expire.

SECTION 3-105 Eligibility to Vote in Township Elections

Persons who are duly registered to vote in Navajo Nation elections, in the Kayenta Chapter election precinct (No. 26) and the Township election precinct (No. 26a), and who reside within the Township boundaries shall be eligible to vote in Township elections.

SECTION 3-106 Applicability of General Election Law

A. The Navajo Nation election procedures, requirements and restrictions (filing for candidacy, schedules and deadlines for primary and general elections and registration. ballots, canvassing, certification, term limitations, absentee voting. filing of reports such as campaign expenses and contributions and grievance procedures). including the conduct of elections by the Nation's Election Administration shall apply to Township elections and such elections shall otherwise conform to the Navajo Nation election laws except as otherwise specifically provided in this Chapter.

B. All filing fees, consistent with the Navajo Nation Election Code. will be charged to each candidate who declares candidacy for Township elections.

SECTION 3-107 Registration of Persons Entitled to Vote

A. The Township Records Manager or his/her successor shall compile and keep up-to-date records of all persons entitled to vote at Township elections under the provisions of this Chapter.

B. Such records shall be compiled by conducting registration drives and. when feasible, such drives shall be in conjunction with drives conducted by the Navajo Nation Election Administration.

C. Such records shall include a Township map upon which the voter shall indicate where she or he resides.

D. The records shall be known as the "Register of Voters – Kayenta Township" and shall be open to the public for review during normal business hours.

SECTION 3-108 Cancellation of a Primary Election

A. This section is to address situations in which holding a primary election would not be necessary because the same candidates will be placed on general election ballot regardless of primary election voting results. A further purpose is to cut costs in conducting an unnecessary election.

B. A primary election shall he conducted between or among candidates only if it is necessary to narrow the number of candidates for purposes of the general election. If conducting a primary election would not narrow the number of candidates for the general election, then the primary election shall be cancelled by the Navajo Nation Election Administration and the candidates will be automatically placed on the general election ballot. For purposes of this section, a "candidates" is one that is certified by the Navajo Nation Election Administration (including a write-in candidate).

C. The Navajo Nation Election Administration shall:

1. cancel the primary election:

2. notify all certified candidates by mail that the primary election has been cancelled; that their names and photos will not appear on the primary election ballot; and that their names and photos shall appear on the general election ballot; and

3. notify the public via publication in any regional (an dlocal newspaper, if any) that the primary election has been cancelled.

D. All fess required of candidates. including write-in candidates, shall not be refundable if a primary election is cancelled

CHAPTER 4

KAYENTA TOWNSHIP
FINANCE AND FISCAL ADMINISTRATION ORDINANCE

SECTION 4-101	TITLE
SECTION 4-102	DEFINITIONS
SECTION 4-103	PURPOSE
SECTION 4-104	ANNUAL OPERATING BUDGET
SECTION 4-105	ANNUAL AUDIT
SECTION 4-106	CAPITAL IMPROVEMENT PLAN
SECTION 4-107	RESERVE ACCOUNT
SECTION 4-108	ACCOUNTING AND FINANCIAL REPORTING
SECTION 4-109	FIXED ASSET SYSTEM
SECTION 4-110	LONG-TERM DEBT
SECTION 4-111	REVENUE COLLECTION; REFUNDS
SECTION 4-112	PROCUREMENT
SECTION 4-113	TRAVEL AUTHORIZATION AND EXPENSES; TRAVEL POLICY AND PROCEDURES MANUAL
SECTION 4-114	ADMINISTRATIVE RULES AND REGULATIONS

FINANCE AND FISCAL ADMINISTRATION ORDINANCE

SECTION 4-101 Title

This Chapter shall be cited as the Finance and Fiscal Administration Ordinance formerly known as the Finance and Fiscal Policies and Procedures Ordinance.

History

KTCAU-70-11 (Aug. 23, 2011) adopted the Finance and Fiscal Policies and Procedures Ordinance.
KTCA-14-13 (April 13, 2013) adopted the revised Finance and Fiscal Administration Ordinance.
KTCS-15-14 (September 25, 3014) adopted the revised Finance and Fiscal Administration Ordinance.

SECTION 4-102 Definitions

A. *Capital Improvement Project* means:

1. Construction of new facilities or improvement of existing facilities that require expenditure in excess of $150,000 or requiring debt obligation:

2. Purchase of major equipment, furnishings or vehicles valued in excess of $150,000.

B. *Professional services contract or professional service* means a contract or service that requires the vendor or contractor to perform personal services that are technical in nature, that require professional or scientific judgment or other special skills, training, taste or discretion, or that are not subject to uniform specifications.

SECTION 4-103 Purpose

The financial integrity of the Township is of utmost importance to the public's confidence that public funds and assets are properly managed, accounted for and used effectively and efficiently. It is also essential to the Township's financial integrity that the Township obtain the most efficient and effective value expenditures of public funds and that the Township promote competition in contracting. This ordinance will provide the foundation and framework for maintaining that integrity.

SECTION 4-104 Annual Operating Budget

A. The Township shall operate a budget system of receipts and expenditures to be prepared and adopted each fiscal year by the Kayenta Township Commission ("Commission"). The budget shall be adopted by resolution at a regular Commission meeting prior to the commencement of the fiscal year.

B. The adopted Annual Operating Budget shall be a balanced operating budget where operating revenues are equal to, or exceed operating expenditures.

C. Any increase in expenditures, decrease in revenues, or combination of the two that would result in an unbalanced budget will require a budget revision that must be approved by the Commission.

D. The Township shall expend funds in accordance with the adopted budget.

1. No expenditures shall be authorized if sufficient budget capacity is not available; the Finance Manager shall prohibit such expenditures.

2. No funds shall be drawn from the treasury of the Township, nor shall any obligation for the expenditure of funds be incurred except pursuant to the budget approved by the Commission.

3. The Township shall submit to the Commission for approval a budgetary control system (rules and regulations) to regulate adherence to the approved budget.

4. Budget Transfers exceeding ten percent (10%) of the original approved budget must be approved by the Commission.

E. The Town Manager with the assistance of the Accounting Manager is responsible for the preparation of the annual budget and shall submit the budget to the Commission at least 15 days prior to the commencement of each fiscal year. The annual budget shall also be posted at a minimum of three public places within the Township prior to the monthly Commission meeting at which the budget will be considered for approval.

F. The Town Manager with the assistance of Department Managers shall annually inventory and assess the condition of all of the Township's capital assets. The Town Manager shall present this inventory and assessment to the Commission. Based on this inventory and assessment, the Town Manager shall also present to the Commission a plan for ongoing financial Commitments as to capital assets that will maximize benefits to the public.

G. In the development of the annual budget and any amendments thereto, the Township shall:

1. Not utilize one-time revenues to fund recurring expenditures; the Township shall give the highest priority in the use of one-time revenues to fund non-recurring expenditures.

2. Identify major revenue sources it considers unpredictable and recommend to the Commission how these revenues may be used.

H. The Township shall set fees and charges for each enterprise fund at a level that fully supports the total direct and indirect cost of the service provided; these fees and charges shall be reviewed and subject to adjustment in the annual budget.

SECTION 4-105 Annual Audit

A. The books, accounts and financial statements of the Township shall be audited at the close of each fiscal year by an independent public accounting firm or an independent certified public accountant selected by the Commission.

B. The annual audit shall be completed and approved by the Commission prior to the approval of the annual operating budget.

C. The Commission's selection of the auditor for the annual audit shall be conducted every four years pursuant to the Township's procurement policies and procedures.

SECTION 4-106 Capital Improvement Plan

For purposes of this section "capital improvement plan" shall mean a multi-year plan identifying capital improvement projects prioritized for development. The plan shall:

1. specify the beginning and ending date of each project.

2. the amount of funds to be expended in each year and the method of financing these expenditures; and

3. specify the status of each project, i.e., whether the project is in the planning, project ready or construction ready phase. The Department Director shall define the requirements and components of each phase and shall make the determination of the status of each project.

SECTION 4-107 Reserve Account

A. The Township shall maintain an Unreserved Fund Balance within its General Fund at a level no less than fifteen percent (15%) of its recurring General Fund revenue.

B. The expenditure of the Unreserved Fund Balance shall be restricted to temporary cash flow shortages, emergencies, unanticipated revenue shortfalls and one-time opportunities.

C. The expenditure of the Unreserved Fund Balance must be approved by a unanimous vote of the Commission.

SECTION 4-108 Accounting and Financial Reporting

A. The Township shall establish and maintain an accounting and financial reporting system that has the capability of producing financial statements in conformance with generally accepted accounting principles and standards of the Government Accounting Board.

B. The Township shall prepare quarterly financial reports to be submitted to the Commission at their regular meeting.

SECTION 4-109 Fixed Asset System

The Township shall establish and maintain a fixed asset system identifying all Township fixed assets, their condition, historical cost, replacement value and useful life.

SECTION 4-110 Long-Term Debt

A. The Township shall confine long-term borrowing to capital improvements with useful lives of five years or more and that cannot be funded from current revenues. Proceeds from long-term debt shall not be used for current on-going operations.

B. All long-term debt issued, including by lease-purchase methods, will be repaid within a period not to exceed the expected useful lives of the improvements financed by the debt.

C. The Township shall maintain annual debt service costs of general obligation debt at a level less that fifteen percent (15%) of its annual unrestricted recurring revenue stream.

SECTION 4-111 Revenue Collection; Refunds

A. The Accounting Manager shall be responsible for the prompt and accurate collection of all monies owed to the Township.

B. The Accounting Manager, with the Town Manager's approval, shall be entitled to make all refunds of monies received but not due the Township up to Ten thousand dollars ($10,000.00) without the approval of the Commission.

SECTION 4-112 Procurement

A. The Finance Office, through the Town Manager, Accounting Manager and Department Manager shall be responsible for the acquisition of property, supplies, goods and services for capital improvement projects.

B. The Finance Department, through the Accounting Manager, shall be responsible for the acquisition of property, supplies, goods and services for administrative needs.

C. All procurement shall be:

1. administered in a fair and impartial manner and to obtain goods and services at the lowest and best cost consistent with specifications required to meet the needs of the Township;

2. in accordance with the Township Procurement Policy and Procedures Manual which may, from time to time, be adopted by the Commission;

3. in conformity with the annual operating budget; where the budget allocation will be exceeded, the procurement shall be submitted to the Commission for approval; and

4. shall be conducted in a competitive manner, except as may be specifically exempted or modified by Township ordinance or rules and regulations enacted pursuant to Section 114 or by applicable Navajo Nation or federal law.

D. Notwithstanding the requirement for competition, the Township shall make awards only to qualified contractors who satisfactorily demonstrate ability to perform within the time provided and otherwise meet the Township's specifications for the contract and the Township, at its sole discretion, may reject any prospective contractor not satisfying the specified qualifications, responsibility and capability.

E. The Commission shall approve all procurement exceeding fifty thousand dollars ($50,000.00).

Cross Reference

By Resolution KTCO-88-2011 the KTC repealed the Purchasing Policies and Procedures Handbook approved by KTCA-12-01 (April 8, 2001), and enacted the Procurement Policy and Procedures Manual.

SECTION 4-113 Travel Authorization and Expenses; Travel Policy and Procedures Manual

A. From time to time, it becomes necessary or appropriate for Commissioners, officials and employees to travel away from the Township to conduct business or perform functions for or on behalf of the Township. The Township shall pay for the mileage, meals, lodging and incidental expenses incurred during such official travel. For purposes of this section, "official travel" shall mean travel that serves a governmental purpose of the Township and that which has been duly approved in accordance with this chapter and the policies and procedures enumerated in the Travel Policy and Procedures Manual.

B. Unless specifically exempted herein, all requests made by the Commissioners for travel authorization shall be approved by the Town Manager. All requests made by the Town Manager for travel authorization shall be approved by the Chairperson, Vice Chairperson or Secretary/Treasurer of the Commission. The Town Manager shall approve all requests for travel authorization by department directors and department employees.

C. All claims for reimbursement of travel expenses shall be approved by the Approving Official and the Finance Manager prior to submittal for payment.

D. The Travel Policy and Procedures Manual shall be distributed to all Commissioners, the Town Manger and department directors and employees, and these officials and employees shall be required to attest that they have read the Manual, understand the provisions, will comply with all provisions thereof and are subject to all sanctions and limits or restrictions on the Township's liability stated therein.

E. The Township shall not be liable for the expenses of a spouse or family members accompanying a Commissioner, the Town Manager or department directors and employees on official travel.

G. Mileage shall be reimbursed at the maximum current rate established by United States Internal Revenue Service from time to time.

Cross Reference

By Resolution KTCF-09-05 (Feb. 14, 2005) the KTC enacted the Travel Policies and Procedures Manual.

SECTION 4-114 Administrative Rules and Regulations

The Commission is empowered to adopt rules and regulations, both substantive and procedural, such as may be necessary to the proper and efficient administration of this chapter.

KAYENTA TOWNSHIP
FISCAL POLICIES, RULES, REGULATIONS, AND PROCEDURES

SECTION 4.201	AUTHORITY; PURPOSE; INTENT
SECTION 4.202	FINANCIAL REPORTING; STANDARDS
SECTION 4.203	FUND ACCOUNTING
SECTION 4.204	BUDGET CLASSIFICATION STRUCTURE; FORMAT; CALENDAR
SECTION 4.205	REVENUE FORECAST
SECTION 4.206	CAPITAL IMPROVEMENT PLAN
SECTION 4.207	DEBT MANAGEMENT
SECTION 4.208	TOWNSHIP GRANTS
SECTION 4.209	LAPSE OF APPROPRIATIONS; LIMITATIONS
SECTION 4.210	CASH
SECTION 4.211	INVESTMENTS
SECTION 4.212	TAXES RECEIVABLE
SECTION 4.213	INTERFUND ACTIVITY
SECTION 4.214	CAPITAL ASSETS
SECTION 4.215	PAYROLL; LEAVE; DEDUCTIONS
SECTION 4.216	FINANCIAL CLOSE AND REPORTING

Section 4.201 Authority; Purpose; Intent

A. The KTC promulgates these policies, rules and regulations pursuant to Section 4-114 of the Finance and Fiscal Policies and Procedures Ordinance.

B. The purpose of this manual is to provide the processes and information need to:

1. Make informed decisions:

2. Assess Township officials' stewardship of public funds;

3. Make appropriate taxing and spending decisions as part of the budgetary process and to plan for the future;

4. Ensure and demonstrate that resources are used properly and that Township assets are protected against the risk of loss or misuse'

5. Evaluate the Township's creditworthiness;

6. Ensure that grant funds were used appropriately; and

7. Analyze budget requests. Monitor and control the provision of services in conjunction with the budget and evaluate performance.

Section 4.202 Financial Reporting; Standards

A. The Township uses three different types of financial reporting:

1. Internal reports are designed to provide management and Commission with the financial information needed to manager the Township government on a daily basis. Therefore, management and Commission are free to specify the form and content of these reports based upon their own assessment of their specific information needs. Internal reports should be issued on a monthly basis at the regular KTC meetings. The monthly reports should compare actual revenues and expenditures to budgeted amounts.

2. External reports are designed to meet the needs of those without direct access to the information contained in the Township's accounting system (citizens, grantors, investors, creditors, and oversight bodies). The Comprehensive Annual Financial Report (CAFR) or the Basis Financial Statements (BFS), issued annually, is used for external reporting purposes. The CAFR and BFS encompass all funds. The CAFR is an extensive report containing the management's assertions on the fiscal and financial health of the Township (e.g. the letter of transmittal), detailed financial data prepared according to GAAP, and includes statistical data on the Township and its operations. The Basic

Financial Statements comprise three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the financial statements. The government-wide financial statements are comprised of a statement of net assets and a statement of activities. The fund financial statements are presented by fund category with the reporting emphasis on individual major funds.

3. In addition to internal and external reports, the Township may issue "popular reports" which are generally geared more for public relations and used to inform taxpayers of the extent and efficiency of Township services. These popular reports can take the form of pamphlets, newspaper articles, power-point presentations, etc.

B. The standards governing the formant and content of the Township Basic Financial Statements or the Comprehensive Annual Financial Report are "generally accepted accounting principles" (GAAP).

Section 4.203 Fund Accounting

A. The Township utilizes fund accounting to account for and report the varying sources and uses of funds. Fund accounting uses fund types to account for and report the diverse governmental activities. The Township shall use only the minimum number of individual funds necessary to be compatible with legal and managerial requirements and to lessen the complexity and cost of financial reporting.

B. The Township shall classify all funds into one of eleven "fund types":

1. Five "governmental" fund types used to account for governmental-type activities, typically supported by taxes.

2. Two "proprietary" fund types used to account for business-type activities, typically financed in whole or in part by fees paid by those who directly benefit from the services.

3. Four "fiduciary" funds types used to account for resources that are held by the government as a trustee or agent for parties outside the government and that cannot be used to support the government's own programs.

C. Governmental Funds

1. General Fund: The general fund is the principle operating fund of the Township and is typically used to account for most of the Township's departments. As a rule, the general fund should be used to account for all the Township's activities unless there is a compelling legal or managerial reason to use some other fund type. There can only be one general fund.

2. Special Revenue Funds: Special revenue funds may be used to account for specific revenue sources that can only be legally spent for designated purposes. An example of a special revenue fund would be the housing grants received through NAHASDA.

3. Debt Services Funds: Debt service funds may be used to account for accumulations of resources that will be used to pay debts of the Township (e.g. bond sinking funds). Debt service funds should only be used if a debt service fund is legally mandated: resources have been accumulated in excess of one year's principle and interest payments: and if grant resources have been received that are restricted to the payment of principle and interest on general long-term debt. Otherwise, debt service funds budgeted in another fund type may be reported in that fund type rather than in the debt service fund (e.g. capital lease payments).

4. Capital Projects Funds: Capital projects funds are used to account for the acquisition or constriction of major capital facilities of the Township. A capital project fund may be used for restricted capital grants of the Township.

5. Permanent Funds: Permanent funds are used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs, that is, for the benefit of the government or its citizenry.

D. Proprietary Funds

1. Enterprise Funds: Enterprise funds may be used to account for activities financed, in whole or in part, by fees collected from customers (e.g. user fees). The Township's solid waste transfer station is an enterprise fund.

2. Internal Services Funds: Internal service funds are typically used to allocate the cost of goods and centralized services to various departments and agencies within a government. The Township at this time has no internal service fund.

E. Fiduciary Funds

1. Fiduciary funds are used for situations in which the Township holds or manages financial resources in an agent or fiduciary capacity. Trust funds will only be used in cases where there is a written agreement with a party outside of the Township. This fund type is further subdivided into four "subfund types."

   a. Investment Trust-Funds – designed to report government sponsored external investment pools. The Township at this time has no investment trust funds.

   b. Private-purpose Trust Funds – designed to report any trust arrangement not properly reported in a pension fund or an investment trust fund. The Township at this time has no private-purpose trust funds.

c. Pension trust funds – used to account for pension plans that are managed by the Township. The Township at this time has no pension trust fund.

d. Agency funds – used in situations where the Township plays a limited role (e.g. simply collecting or temporarily holding resources on behalf of some third party). Only assets and liabilities, not equity, are reported for this fund. As an example, the Township used an agency fund to collect fees and disburse payments for a public economic summit in which the Township assisted in operations.

F. Measurement Focus

The measurement focus on the Township's governmental funds (what is measured and reported in a fund's operating statement) is simply the amount of resources available for spending.

1. Governmental funds use a "flow of current financial resources" measurement under which the operating statement attempts to answer the question "Are there more or less resources that can be spent in the near future as a result of events and transactions of the period?" Increased in spendable resources are reported in the operating statements as "revenues" or "other financing sources." Decreases in spendable resources are reported as "expenditures" or "other financing uses."

2. The operating statement of a proprietary fund is designed to answer the question "Is the fund better or worse off economically as a result of events and transactions of the period." Events and transactions that improve the economic position of a proprietary fund are reported as "revenues" or "gains" in the operating statement. Those that diminish the economic position of a proprietary fund are reported as "expenses" or "losses." The government-wide financial statements also use the economic resources measurement focus.

3. There are five practical differences between the measurement focus used by proprietary funds and that used by governmental funds.

   a. The receipt of the proceeds of long-term debt is reported in the operating statement of governmental funds, but not in the operating statement of proprietary funds.

   b. The repayment of the principal of long-term debt is reported in the operating statement of governmental funds, but not in the operating statement of proprietary funds.

   c. Capital outlay is reported in the operating statement of governmental funds, but no in the operating statement of proprietary funds.

d. The exhaustion of capital assets (i.e. depreciation) is not reported in the operating statement of governmental funds, but is reported in the operating statement of proprietary funds.

e. Disbursements benefiting future periods normally are deferred and amortized over those periods in the operating statement of proprietary funds (e.g. bond issuance costs), but not in the operating statement of governmental funds.

G. Basis of Accounting

A fund's "basis of accounting" determines when a transaction or event is recognized in the fund's operating statement.

1. The Township's governmental funds shall use modified accrual accounting. Revenues are recognized when measureable and available to liquidate liabilities of the current period. Expenditures generally are recognized when an event or transaction is expected to draw upon current spendable resources (rather than future resources).

2. The Township's government wide and proprietary fund financial statements shall use full accrual accounting. Transactions and events recognized when they occur, regardless of the timing of related cash flows.

H. Framework of Financial Reporting

1. Assets = Liabilities + Equity, the formula commonly referred to as the "accounting equation," shall serve as the basis of all Township bookkeeping and accounting.

2. For purposes of this manual, "fund balance" shall mean the difference between financial assets and certain liabilities expected to be liquidated in the near future from those assets. Furthermore, fund balance is divided into restricted, committed, assigned, and unassigned categories. The restricted, committed, and assigned categories are used to identify net assets that are not spendable or available for appropriations. Unassigned fund balance is the measure of net available resources (the amount available for appropriations).

   a. The restricted fund balance category includes amounts that can be spent only for specific purposes stipulated by the Commission or external resource providers.

   b. The committed fund balance classification includes amounts that can be used only for the specific purposes determined by a formal action of the Commission.

   c. The assigned fund balance classification included amounts that can be used only for the specific purposes but do not meet the criteria to be classified as restricted or committed. In governmental funds other than the general fund, assigned fund balance represents the remaining amount that is not restricted or committed.

d. Unassigned fund balance is the residual classification for the Township's general fund and includes all spendable amounts not contained in other classifications.

I. Financial Accounting Records

1. The objectives of the Township's accounting system are to provide reliable financial information in conformity with generally accepted accounting principles on a timely basis and to safeguard assets. To achieve these objectives, the accounting system shall ensure that all transactions are recorded in the appropriate accounts for the actual amounts in the fiscal year in which they occur. Additionally the accounting system shall monitor the Township's compliance requirements in its use of financial resources.

2. The Township shall properly maintain accounting records (documentary support) for account balances. Accounting records include source documents, journals, registers, ledgers, and other supplementary records.

   a. Source documents are used to initiate accounting transactions and should be retained to support each entry recorded in the accounting records. Examples of cash receipts source documents include pre-numbered cash receipt forms, cash register tapes, and validated bank deposit receipts. Examples of cash disbursements source documents include requisitions, purchase orders, receiving reports. And vendor invoices.

   b. A journal is defined as a book or original entry. Journals provide a chronological, detailed record of daily financial transactions and support balances in the general ledger accounts. Journals may be posted manually or generated by computer.

   c. The general ledger is the summary of financial transactions and the basis for preparing trial balances and financial reports.

J. Account Coding

1. The Township shall have in place a chart of accounts that meets both the current and future needs of the Township. The account structure shall consist of four segments and ten characters (XXX-X-XX-XXXX). The account structure is as follows:

   a. The first segment, consisting of three characters, denotes the fund, such as general fund, special revenue fund, enterprise fund, etc.

   b. The second segment, one character, denotes a function, such as general government, public safety, health and welfare, etc.

   c. The third segment, consisting of two characters, denotes a department, cost center, or a project within a fund.

   d. The last segment, consisting of four characters, represents the object code.

2. For Township accounting, the following Chart of Accounts will be utilized:

a. Fund #s	100-900	
b. Function #s	1-9	
c. Department #s	10-99	
d. Object #s	1000-1999	Assets
	2000-2999	Liabilities
	3000-3999	Fund Balance
	4000-4999	Revenues
	5100-7999	Expenditures

3. The Finance Director is hereby authorized to make changes to the Township Chart of Accounts as needed.

4. The following objects of expenditures will be utilized:

   a. Personnel – based on position classifications and wage schedules.

   b. Operating – office supplies, utilities, contractual and maintenance. Estimate based on historical cost plus an inflation factor, and evaluation of demand and need.

   c. Capital – normally last more than one year and cost more than a specified threshold amount.

Section 4.204 Budget Classification Structure; Format; Calendar

A. Budget Classification Structure and Format

1. The following budget classification structure shall be used:

   a. Fund – an accounting related entity which exists to control and account for funds from various sources;

   b. Two level major/minor object of expenditure – a specific category of cost designed to provide detail in types of commodities or services purchased and the provision of services;

   c. Organizational Units/Departments – for funds appropriated for entities such as the KVFD and the Police Department;

d. Source of Revenues – type of revenues received such as sales tax;

e. Project – a special classification for capital outlays and for federal grant activities;

f. Restrictions; and

g. Debt Financing.

2. The following data shall be presented in the budget format:

a. Prior year actual expenditures:

b. Current year budget or estimated expenditures;

c. Recommended budget:

d. Increase/(decrease) between recommended budget & current year estimates;

e. Percentage change between recommended budget and current year estimates;

f. Brief explanation of change in spending levels and a statement of what proposed budget is for (including how the proposed budget was calculated).

3. The budget document may also contain the following:

a. Message from the Town Manager which describes major assumptions underlying the budget, major issues to be addressed. and significant changes in proposed budget from current year budget:

b. Planning processes such as the strategic plan, long-range financial goals, CIP plans, and their impact upon the budget and budget process;

c. A summary of total revenues by source;

d. A summary of total expenditures;

e. A summary of capital information. a list of major capital projects;

f. Goals & Objectives and Performance Measures; and

g. Budget Resolution

B. Budget Calendar

To ensure compliance with the requirement of Section 4-104(A) of the Finance and Fiscal Policies and Procedures Ordinance that the budget be enacted prior to the beginning of the budget fiscal year, a budget calendar that establishes all key dates in the preparation of the budget shall be developed by the Township and approved by the KTC. At a minimum, the calendar should indicate periods during which the following activities will occur:

1. December – Conduct Financial Planning Process – Assess the long-term financial implications of significant changes in its revenues and expenditures. At the same session, the KTC will review progress and accomplishments towards achievement of the strategic plan goals and objectives and update the strategic plan. Other items for consideration during this session will be:

    a. Current revenue performances and preliminary estimates for the budget year;

    b. Current expenditures versus budgeted and prospects of a surplus to carry over into the new budget year;

    c. Trends in inflation and local economic condition;

    d. Prospects for new taxes or fees or changes in current tax and fee rates;

    e. Major cost items which will fall due in the budget year;

    f. Discussion of service issues;

    g. Basic policies to guide the budget development;

    h. A range for cost of living adjustments to salaries; and

    i. An indication of what services should be strengthened, deemphasized, or reduced.

2. January through February – The Township shall gather and review all budget requests, prepare revenue projections, prepare staff performance evaluations and staffing analyses, formulate or update Capital Improvement Plan, prepare budget recommendations and produce the preliminary budget documents.

3. March – Hold a budget work-session to review the recommended preliminary budget documents, make adjustments necessary.

4. April – The adjusted budget document shall be posted at a minimum of three public places within the Township and published.

5. May – At a duly called regular meeting of the KTC, the final budget document is presented for approval.

Section 4.205 Revenue Forecast

A. All revenue forecasts shall be conservative and shall consider that the Township's major sources of revenues are sensitive to both local and regional economic conditions. It is Township policy that conservative revenue forecasts will minimize the possibility of revenue shortfalls that create a negative impact on the Township's financial condition.

B. The Finance Director may utilize a method of trend analysis to project revenues. A trend analysis is a historical collection pattern of each revenue source to predict future revenues.

C. The Finance Director's revenue forecast shall be prepared in conjunction and coordinated with the Town Manager's assessment of the long term implications of significant changes in revenues and expenses as required by Section 4-104(F) and the Town Manager's inventory and assessment of capital assets as required by Section 4-104(G) of the Finance and Fiscal Policies and Procedures Ordinance.

Section 4.206 Capital Improvement Plan

A. The capital improvement plan will directly relate to the long-range plans and policies of the Commission. Operating funds needed to maintain capital improvements and additional staff needs will be established and identified prior to making the decision to undertake specific capital improvement.

B. Where benefits can be specifically attributed to users of the facility, capital improvement will be financed primarily through user fees, service charges, or developer agreements. Accordingly, development of impact fees shall be established and implemented at levels sufficient to ensure that new development pays its fair share of the cost of constructing necessary community facilities.

Section 4.207 Debt Management

A. The Township will fund capital projects with grant funds or on a pay-as-you go basis as much as possible before using debt financing.

B. Debt financing will be on a competitive basis. Private placements (negotiated financing), upon the prior approval of the Commission, may be used when the market is highly volatile or the debt structure is highly unusual and complex as to financing structure or security structure.

C. Debt schedules will be prepared and included in the annual budget and the capital improvement plan.

D. Debt shall be structured in such a way that debt load is explicitly related to the operating budget and the ability to handle debt will not impair operating needs.

E. The Township will, with the assistance of a financial consultant if deemed necessary by the Finance Director, undertake a feasibility analysis for any proposed long-term financing to determine current and future budgetary impact and reliability of revenue stream to support both debt services requirements and operations. The Commission will review the financing program annually.

Section 4.208 Township Grants

A. Any request for a grant from the Township shall meet the following criteria and procedures:

1. Budget requests must be submitted to the Township by January with an approved board resolution or transmittal letter signed by an authorized official.

2. The budget request should be itemized according to object of expenditure and should contain brief justifications. Activity data such as number of emergency responses and the like can be used to supplement the budget request.

   a. Request involving purchase of vehicles or large equipment should be requested separately with justifications and quotes.
   b. Funds awarded cannot be expended for legal fees or for any expenditure not identified in the submitted budget.

3. The requesting entity shall be present to make presentations and answer questions when the annual budget is being prepared, reviewed, and considered for adoption.

4. It is the requesting entity's responsibility to:

   a. Ensure compliance with the legally adopted budget; for this reason, the entity will periodically make summarized financial and budget reports to the Commission and provide hard copies of the reports; and

   b. Track its budget to actual costs; the Township staff will not be responsible for maintaining reports of expenditures and remaining balances on behalf of the recipient.

B. The Township will not disburse any award funds directly to the entity, its members, or officers. Funds will be disbursed only vendors and only for those objects of expenditures identified in the budget request.

C. Request for fund disbursements will be made weekly and signed by the Finance Director.

1. The disbursement request will contain a summarized list of the attached invoices.

2. Original invoices will be attached to the funds disbursements request plus any supporting documentation such as receiving reports. No summary statements will be accepted in place of original invoices.

3. If reimbursements are requested for expenditures already incurred on behalf of the entity, approval must be obtained from the entity's board members or authorizing official.

4. The requesting entity will avoid the accumulation of unpaid invoices which will result in large sums of monies to be paid out at one time.

Section 4.209 Lapse of Appropriations; Limitations

A. Appropriations will lapse at the end of each fiscal year unless otherwise designated by the Commission. "Lapse" of appropriated funds means that because the funds were not encumbered for its intended use within the designated time period the funds shall again become part of the General Fund and be available for appropriation in the next budget cycle.

B. Any limitation, stipulation or condition on the use or expenditure should be explicitly stipulated in the budget resolution to ensure control of local resources.

C. Spending limits must be entered into accounting records so effective accounting control can be established.

Section 4.210 Cash

Cash includes currency, coins and certain types of formal negotiable paper, such as bank drafts, cashier's checks, money orders, ordinary checks, and balances on deposit with commercial banks. Cash received directly by the Township may include sales tax receipts, donations, grants, and proceeds from business site leases. Cash is also generated through sales of goods or services by the Township.

A. Because of the relatively high risk associated with transactions involving cash, the Township shall maintain a cash management system to safeguard cash and provide prompt and accurate reporting, including adequate internal accounting controls over cash receipts and disbursements.

B. The Township will minimize deposit custodial credit risk, which is the risk of loss of failure of the depository bank (or credit union), by obtaining collateral or bond for all uninsured amounts on deposit, and by obtaining necessary documentation to show a perfected security interest under federal law.

C. Cash Receipts

1. Cash-handling and record keeping functions shall be properly segregated among staff or adequately monitored to safeguard cash.

2. Cash must be adequately safeguarded (kept locked at all times), promptly recorded and accurately classified.

3. Employees handling significant amounts of cash must be adequately bonded.

4. Pre-numbered and numerically controlled cash receipt forms shall be prepared in duplicate for each cash payment received. Voided receipts must be retained for accountability purposes.

5. Cash receipts must be deposited intact daily, when significant, or at least weekly.

6. A validated copy of the deposit slip and a bank deposit must be retained for each deposit.

7. Reconciliation of receipts issued and recorded to cash deposited shall be prepared. The same person writing receipts shall not perform reconciliation.

8. The cash receipt shall not be used for replenishment of the petty cash fund or for payment on expenditures until properly deposited and accounted for in the Township's records and bank account.

9. The use of checks or money orders to make payments should be encouraged.

10. Checks received should be immediately stamped "for deposit only."

D. Cash Disbursements

1. The Finance Director shall ensure that the duties of individuals approving disbursements and individuals maintaining accounting records shall be segregated.

2. There shall be an accounts payable section, independent of the purchasing and receiving section that is responsible for payment of invoices on a timely basis.

3. A properly authorized order if applicable and a properly completed receiving report are required before an invoice is approved for payment.

4. There shall be a payment requisition system for payment of invoices and other cash disbursements. A requisition will summarize disbursements and provide for authorization. Upon approval of a requisition, the Township shall issue checks corresponding to payments authorized on the requisition.

5. Pre-numbered checks shall be used that include the date, amount, payee, and purpose for which the check was drawn (disbursement code). The check must have two required signatures.

6. Vendors shall mail invoices directly to the accounts payable section. The accounts payable section shall record the date of receipt on invoices. If the invoice has more than one copy, each copy other than the original should be marked "duplicate copy" to prevent duplicate payment. Account payable should match the invoice to the applicable purchases and receiving report.

7. Accounts payable personnel shall compare terms, prices and quantities on the invoice to the purchase order and the receiving report. They shall also check the mathematical accuracy of extensions and footings, verify the propriety of account distribution. and indicate by signing and dating the invoice that the above steps were completed. Discrepancies or errors discovered through this review shall be resolved be contacting the vendor. All paid invoices shall be stamped with "Paid" with the check number, amount, and date of payment.

8. Cash disbursements from authorized bank accounts must be made with pre-numbered checks and used in sequence. Each check should be marked "void after 90 days" to ensure prompt cashing by the payee.

9. Checks must be properly completed before issuance, and must not be written to cash or bearer. Voided checks must be so stamped to prevent reuse and numerically filed with other cancelled checks.

10. Unused checks must be physically safeguarded and access to them must be limited to authorized personnel.

11. Use of signature stamp must be properly authorized by the Commission. The signature stamps must be physically safeguarded and access to them limited to a minimum number of employees who do not have access to the blank checks.

E. Petty Cash

1. There is hereby established a Petty Cash Fund in the amount of $150.00 for minor disbursements when checks are not practical or immediate cash payments are required by checks drawn on the Township's general fund bank account.

2. Petty cash funds shall be maintained on an impress basis. This means that the money is the petty cash box plus Petty Cash Withdrawal Requests and receipts shall equal the authorized petty cash funds amount at all times.

3. The Finance Director shall designate one individual as the petty cash fund custodian. The custodian shall make certain the cash is locked in a safe or a cash box to which only the custodian has access. The petty cash fund custodian shall be a person independent of record keeping functions.

4. Petty cash fund expenditures shall not exceed $50 for any single purchase.

5. The petty cash fund purchase documents shall be maintained at all times and the expenditures shall be classified.

6. The petty cash fund purchase documents shall be required for the replenishment of the petty cash fund and the petty cash fund shall be replenished as needed.

7. Funds from the Township's checking account shall always be used for the establishment/replenishment of the petty cash fund.

8. The petty cash fund shall, at all times, be kept separate from cash receipts.

F. Bank Account

1. Bank accounts must be authorized by Commission resolution and be held in the name of the Kayenta Township. A list of authorized check signers designated by the Commission for each bank account must be kept current. Inactive bank accounts must be closed promptly.

2. Upon a change in authorization of bank account signatures, the Finance Director will immediately notify the bank by submitting the Commission resolution and change the authorization signature form.

3. The Township Tax Identification Number shall be used on all bank accounts.

4. Direct cash withdrawals and ATM/debit cards are prohibited.

5. Funds withdrawn from a savings or investment account must be transferred by authorized signatories to the checking account in order to be expended, which can be in the form or a cashier's check or internal transfer.

6. All bank records shall be sent directly to the Township's mailing address.

G. Bank Reconciliations

1. A written bank reconciliation must be prepared monthly on a timely basis. An employee who is not responsible for handling cash issuing checks should prepare the bank reconciliation. The Finance Director shall review and approve the reconciliation.
2. The Township shall receive monthly bank statements that summarize the monthly activity and report the ending cash balance for each bank account. Bank statement cash balances generally do not agree to the Township's records because checks may be outstanding, deposits may be in transit, and the Township may not have recorded bank charges. Therefore, reconciliation is performed to verify the accuracy of both balances.

3. The bank reconciliation shall be signed and dated by the preparer and reviewer.

4. The employee reconciling the account shall:

   a. Receive the unopened envelope containing the bank statement and canceled checks;

   b. Obtain the check register and file of validated deposit slips for the bank account;

   c. Compare the canceled checks to the check register to ensure that the number, date, payee, and amount are in agreement. Canceled checks shall be examined for alterations, authorized signatures, and irregular endorsements;

   d. Prepare a listing of outstanding checks. Outstanding checks are checks that have been issued and deducted from the check register balance but have not been deducted from the bank balances as shown on the bank statement. If the listing of outstanding checks discloses that have been outstanding for three months (90 days) or longer, the employee shall delete those checks from the listing of outstanding checks and increase the check register by the amount of the voided checks. The prepared shall also notify the bank to issue a stop payment;

   e. Compare the date and amount of each deposit shown on the bank statement to the validated bank deposit slip maintained on file and to the check register;

   f. Prepare a listing of deposits in transit. Deposits in transit are deposits made subsequent to the bank statement date and therefore, are not included in the bank balance or shown on the bank statement;

   g. Differences noted in 4(c) and 4(e) above should be resolved and the check register balance adjusted, if necessary;

   h. Record the bank charges indicated on the statement in the check register;

   i. Compute the month-end reconciled balance as follows:

      Ending balance per bank statement
      (+) Deposits in transit
      (-) Outstanding checks
      (=) Month-end reconciled balance;

   j. Compare the balance computed in 4(i) above to the adjusted balance in the check register. Differences should be resolved;

   k. Sign and date the reconciliation; and

l. File the reconciliation, bank statement, and canceled checks by account by month.

Section 4.211 Investments

A. It is the Township's policy to maintain a balance of high quality, diversified investments to maximize earnings on invisible funds with acceptable levels of credit and interest rate risk exposure. The Township will eliminate investment custodial credit risk by permitting brokers that obtain investments for the Township to hold them only to the extent there is SIPC and excess SIPC coverage available. Securities purchased that exceed available SIPC coverages shall be transferred to the Township's custodian. Certificates of deposit will only be purchased from financial institutions that are fully insured with the Federal Deposit Insurance Corporation.

B. The Finance Director will review the Township's current cash flow position and future budgeted cash needs on at least a quarterly basis and propose any changes to current levels invested to the Commission.

C. Only the Commission has the authority to approve investment transactions. All investment decisions shall be documented in the minutes to Commission meetings.

D. After approval by the Commission, the Finance Director shall initiate the purchase or sale of the investments. See Section 4.210, Cash Disbursements, for procedures outlining the payment requisition system and check preparation and recording.

E. Third party statements shall be reconciled to the general ledger investment accounts. Any differences must be promptly resolved. If a correcting journal entry is required, the entry must have adequate supporting documentation and be reviewed and approved independently prior to posting.

F. On at least quarterly basis, the Finance Director will provide the Commission with an investment schedule detailing the type of investments held, cost and fair market value of the investments, interest rates being earned, and the maturity dates. The Commission should review the investments held to determine whether they meet any restrictions or limitations imposed.

G. Investments will be recorded in the general ledger at fair value.

Section 4.212 Taxes Receivable

A. Commissioners approve all sales tax rates. The finance department oversees the collections and recording of business sales taxes. Sales tax revenues are recognized on the accrual basis of accounting. Revenues are recognized when earned; not collected;

B. The Finance Director shall ensure that the duties of individuals who prepare tax bills and notices are segregated from those individuals who collect taxes receivable. record tax receipts. and authorize write offs of receivable balances.

C. All entities doing business within the Township are required to submit a Sales Tax Return on a monthly basis. Late notices will be mailed to businesses who do not submit a return by the end of the subsequent month.

D. Upon receipt of a Sales Tax Return, the finance department checks the return for clerical accuracy and matches the tax due calculated on the return to the cash/check received. See Section 4.210. Cash Receipts, for procedures outlining the cash handling and record keeping functions for cash received.

E. The Finance Director will prepare a fiscal year end journal entry to record uncollected sales tax revenues. The Finance Director will also analyze the receivable balance and propose an entry to record an allowance for any doubtful accounts.

Section 4.213 Interfund Activity

A. Interfund loans and transfers must be approved by the Finance Director prior to transfer of funds.

B. Interfund receivables and payables must be balanced monthly and reconciled to the general ledger.

Section 4.214 Capital Assets

Capital assets consist of buildings and improvements, furniture and equipment, and vehicles. These assets represent major investments of Township funds; therefore, adequate control and accountability of these assets must be established through development of a complete property control system. An annual inventory and assessment of capital assets is required by Section 4-104(G) of the Finance and Fiscal Policies and Procedures Ordinance. Section 4-109 of the same ordinance requires that a capital asset system be established and maintained.

A. The Finance Director will maintain a capital asset listing. This listing and supporting records should include a description of the asset, cost, date acquired, location, useful life. and source of funding.

   1. When an asset is disposed of, the asset shall be deleted from the capital assets listing.

   2. Obsolete or damaged equipment shall be deleted from the capital assets listing.

B. The capitalization criteria for capitalizing assets will be unit cost of $5.000.00 or more and with a useful life of more than one year.

1. Capital assets are valuated at actual cost unless donated. If donated, the fair market value as of the date of acquisition will be used.

2. The cost of a building will include the contract purchase price, expenditures to place the building into serviceable condition. A/E fees, building permits, and permanent fixtures such as heating and cooling equipment. plumbing. lighting fixtures, etc.

3. Differences between expenditures for improvements and expenditures for repairs and maintenance should be distinguished. Expenditures for repairs and maintenance are not included in the capital assets listing. If the expenditures significantly extends the useful life of an asset, it should be added to the recorded cost of the asset on the capital assets listing.

C. All capital assets, with the exception of land and construction in progress, will be depreciated using the straight-line method over the asset's estimated useful life.

D. The Finance Director will:

1. Ensure that capital assets are properly tagged with identification tags.

2. Record and report in the Township's accounting financial records, the total dollar value of inventory items and changes thereto; including acquisition and disposition of capital assets and funding source.

3. Make verification of inventory on an annual basis through physical count. Any differences from the financial records will be investigated for cause and the records adjusted accordingly.

4. Ensure that adequate insurance coverage shall be maintained.

Section 4.215 Payroll; Leave; Deductions

A. The following policies shall be implemented to establish an effective internal control over payroll:

1. The Commission shall approve a salary and wage schedule abiding with the applicable minimum wage laws.

2. Appropriate segregation of duties in payroll processing shall be maintained by the Finances Director. The same employee shall not be assigned the responsibilities for preparing and authorizing payroll and distributing checks.

3. A delayed payroll system shall be maintained. This type of system allows time for payroll adjustments to be made before payment to help insure that employees receive

only the amount of wages they have earned. The maximum payroll time shall be one working day.

4. The Finance Director shall maintain internal control over processing, storing, and issuing payroll checks and ensure that recording payroll expenses are recorded in the correct fiscal year.

5. A record of the accrual and use of annual, sick and compensatory leave shall be maintained for all employees.

   a. Accrual rates of 4 hours per pay period for annual leave and 2 hours per pay period for sick leave shall be maintained.

   b. The maximum amount of accrued annual leave shall be 104 hours in a fiscal year and 64 hours thereof shall lapse at the end of the fiscal year if not used.

   c. Upon termination of employment an employee shall be compensated for accrued annual leave.

B. Payroll records shall be maintained for all personnel. Records shall provide adequate support for payroll expenditures and account distribution, and serve as a basis for preparing payroll vouchers and reports. In order to provide support and information for preparing payroll documents, individual employee files shall include at least the following documents:

1. Personnel/Payroll Action Form. This form shall be prepared and retained to document employment terms.

2. Employee's Federal Withholding Allowance Certificate (W-4). This form shall be prepared and the employee shall sign it before the first salary or wage payment is made. If an employee has not submitted a signed W-4 form before the end of the first payroll period, federal income tax shall be withheld at the single rate with no withholding allowances.

3. Voluntary Deduction Authorizations. Voluntary deductions may be withheld at an employee's request for items such as credit union deposits or additional insurance. A voluntary deduction authorization form shall be retained in the employee's payroll fole to support each voluntary deduction, and remain in effect until a new one is prepared or a written request canceling the deduction is received from the employee.

4. Pay or Position Change Notices. Pay or position changes, including employment, termination and rate changes, shall be documented. Proposed pay or position change documentation shall provide for approval by an authorized official for the initiation of the new salary or position.

5. Leave Summaries. Leave Summaries are used to record the accrual of annual leave, sick leave and compensatory time earned or used for each employee and shall be updated at the end of each pay period using the Individual Time Sheet. All leave (other than emergency or sick leave) shall be approved in advance in writing and the balances of annual and compensatory time earned or used shall be verified prior to approval of the leave.

6. Attendance Records. Attendance records such as individual time sheets or clock cards shall be prepared for each employee for each pay period, signed by the employee, approved by the employee's supervisor, and retained to support payroll. Attendance records for employees shall document regular and overtime hour worked, annual leave, sick leave, leave without pay, and compensatory time taken or earned during the pay period.

7. Payroll Register. The payroll register shall be updated from attendance records, pay or position change notice, and withholding and voluntary deduction authorization forms. The register shall be reviewed for reasonableness, and exceptions noted on a listing of exceptions. The completed payroll register, and a listing of any exceptions, shall be reviewed and approved by the Finance Director. The payroll register shall include the period covered, employee's names, identification and social security numbers, account numbers and funds charged for payroll, wage or salary rates (regular and overtime), hours worked (regular and overtime), gross pay, federal withholding taxes, Social Security, Medicare, authorized voluntary deductions, and net pay. The payroll register shall also show totals for gross pay, net pay, and mandatory and voluntary deductions for all employees for the pay period, and for the year-to-date.

8. The Finance Director or her/his designee shall verify that payroll checks and the payroll register amounts agree.

9. The Finance Director shall refer to applicable Internal Revenue Service (IRS) publications and consult with legal counsel for guidance in determining whether an employer-employee or independent contractor relationship exists.

C. Pursuant to legal requirements, the Township shall prepare and file the following documents and make appropriate payroll deductions or payments:

1. The Township must prepare and submit a US Department of Treasury Form 1099-Misc. to each vendor to whom $600 or more in fees, commissions, or other forms of compensation is paid. Such vendors typically include independent contractors, attorneys, accountants and other professionals. These forms must be filed with the Internal Revenue Service by February 28 of the following year.

2. The Township participates in the Workers' Compensation Program maintained by the Navajo Nation. The Finance Director shall ensure the payment of the required premium. The Township, not an employee, is responsible for paying the premium.

3. The Federal insurance Contribution Act (FICA) provides for a federal system of old-age, survivors, disability and hospital insurance. The old-age. survivors and disability insurance (OASI) portion is financed by the Social Security tax. The hospital insurance portion is financed by the Medicare tax. The Township must withhold Social Security and Medicare taxes from the salaries and wages of employees. In addition to the withholdings, the Township must contribute an equal amount. The Township must also file the appropriate returns and forms with the IRS. and deposit the taxes through the federal tax deposit system.

4. Salaries and wages of non-Navajo employees are subject to federal and states income taxes. Salaries and wages earned by Navajo employees are exempt from state income tax. The Township must withhold federal income tax from salaries and wages in accordance with the Internal Revenue Service Code. The amount withheld is a percentage of the gross salary less contributions to an approved retirement system. Federal income tax must also be withheld from amounts paid to employees as supplemental wages as prescribed in IRS Circular E.

5. The Township contributes to the State Unemployment Compensation Fund by participation in the Navajo Nation Program which is operated pursuant to an agreement between the Navajo Nation and the state of Arizona. The Township contributes to the Fund based on a percentage of total salaries and wages. The Township submits contributions quarterly to the state Department of Economic Security and Department of Employment Security.

6. Pursuant to the same agreement between the Navajo Nation and the state of Arizona mentioned at C (5) above the Township contributes to the fund established under the Federal Unemployment Tax Act (FUTA). The Finance Director shall ensure that Forms 941 and 940 and required payments are filed and paid in a timely manner.

7. The Township may deposit Social Security, Medicare and Federal tax withholdings with Form 8109 on a semi-weekly basis at any authorized financial institution or Federal Reserve Bank, or tax payments can be made through the Electronic Federal Tax Payment System (EFTPS). The Finance Director must insure that timely deposits are made to avoid penalties.

Section 4.216 Financial Close and Reporting

A. The Finance Director shall oversee the preparation of the monthly financial statements presented to the Commission. The reports should be released after cash and investment accounts have been reconciled to third-party statements and other significant balance sheet accounts reconciled to subsidiary ledgers. The statements shall be available no later than 30 days after the month end.

B. The Finance Director will oversee the preparation of recurring journal entries such as the recognition of depreciation expense. All journal entries must have adequate supporting documentation and be reviewed and approved independently prior to posting.

C. Routine and nonroutine events and transactions occurring near the period end shall be analyzed and reviewed to ensure they are accounted for in the correct accounting period.

D. All related-party events and transactions shall be identified and a schedule detailing them will be prepared. The schedule shall be presented to the Commission along with the monthly financial statements.

E. The Finance Director is responsible for developing a process to ensure that the trial balance used in the financial statement preparation process is final, contains all valid journal entries made, and is in balance.

CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES

SUBCHAPTER 1
TAX ADMINISTRATION

SECTION 8-101	TITLE
SECTION 8-102	PURPOSE
SECTION 8-103	ADMINISTRATION
SECTION 8-104	DEFINITIONS
SECTION 8-105	ASSESSMENT OF TAXES
SECTION 8-106	JEOPARDY ASSESSMENTS
SECTION 8-107	WAIVER OF TAXES
SECTION 8-108	NONDISCRIMINATION
SECTION 8-109	DESIGNATION OF INDIVIDUAL
SECTION 8-110	EXTENSION OF TIME
SECTION 8-111	RECORDKEEPING
SECTION 8-112	INTEREST IMPOSED
SECTION 8-113	PENALTIES FOR FAILURE TO FILE
SECTION 8-114	PENALTIES FOR FAILURE TO PAY
SECTION 8-115	PENALTIES FOR ATTEMPT TO EVADE OR DEFEAT TAX
SECTION 8-116	CHARGES FOR ADMINISTRATIVE COSTS
SECTION 8-117	FAILURE TO COMPLY WITH ORDINANCE
SECTION 8-118	INTERFERENCE WITH ADMINISTRATION
SECTION 8-119	COLLECTION POWERS
SECTION 8-120	SECURITY FOR PAYMENT
SECTION 8-121	LIEN FOR TAXES
SECTION 8-122	PRIORITY OF LIEN
SECTION 8-123	RELEASE OF LIEN
SECTION 8-124	FORECLOSURE OF LIEN
SECTION 8-125	APPLICATION OF PROCEEDS
SECTION 8-126	INTERFERENCE WITH FORECLOSURE
SECTION 8-127	TRANSFER OF BUSINESS
SECTION 8-128	MUTUAL ASSISTANCE AGREEMENTS
SECTION 8-129	PROHIBITION OF SUITS
SECTION 8-130	STATUTE OF LIMITATIONS.
SECTION 8-131	PROCEDURE FOR REFUNDS.
SECTION 8-132	PROCEDURE FOR APPEAL
SECTION 8-133	ABATEMENT AUTHORITY
SECTION 8-134	CLOSING AGREEMENTS
SECTION 8-135	CONFIDENTIALITY RULES

SECTION 8-136 NOTICE
SECTION 8-137 INVESTIGATIVE AUTHORITY
SECTION 8-138 OATHS AND AFFIRMATIONS
SECTION 8-139 RECEIPTS; DISBURSEMENTS
SECTION 8-140 SEVERABILITY
SECTION 8-141 EFFECTIVE DATE

TAX ADMINISTRATION ORDINANCE

SECTION 8-101 Title

This subchapter shall be known as Subchapter One. Tax Administration, of Chapter 8, Kayenta Township Tax Ordinances.

History

KTCJY-59-11 (July 28, 2011)
KTCA-06-14 (April 14, 2014)

SECTION 8-102 Purpose

The purpose of this subchapter is to provide statutory rules applicable to all taxes imposed by the Commission.

SECTION 8-103 Administration

A. The Commission is empowered to administer and delegate the administration of all taxes and, to that end, shall be empowered to adopt substantive and procedural rules and regulations, orders implementing its decisions and rulings. and instructions such as may be necessary to the proper and efficient administration of these laws.

B. The Kayenta Township shall have day-to-day responsibility for the administration of all tax ordinances and shall have all powers consistent with its plan of operation.

SECTION 8-104 Definitions

Subject to additional definitions (if any) contained in the subsequent sections of this subchapter or in subsequent chapters:

A. "Chapter" means Chapter 8, Kayenta Township Tax Ordinances. its subchapters and accompanying regulations.

B. "Control" means the right or any kind of ability to direct the performance or activity of another, whether legally enforceable or not, and however such right may be exercisable or exercised.

C. "Commission" means the Kayenta Township Commission.

D. "Fraud" occurs when any person:

1. willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe to be true and correct as to every matter;

2. files any return electronically, knowing that the information in the return is not true and correct as to every material matter; or

3. with intent to evade or defeat the payment or collection of any tax, or knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals, or releases any property on which levy is authorized or that is liable for payment of tax or aids in accomplishing or causes the accomplishment of any of the foregoing.

E. "Month" means any consecutive thirty (30) calendar day time period for purposes of this subchapter.

F. "Ordinance" means the Kayenta Township Tax Ordinances, which includes this subchapter and any tax ordinance enacted by the Commission.

G. "Person" means any organization, whether a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, company, corporation, or government, including any wholly owned subdivision, enterprise, corporation or other entity of the Navajo Nation government, or any part, division, or agency of any of the foregoing, and an individual or group of individuals.

H. "Received" means:

1. the postmark date, if action is taken by mail;

2. the date actually received by the Kayenta Township, when documents and/or payments are hand-delivered; or

3. the date of receipt by the Kayenta Township, in the case of wire transfer payments.

I. "Regulations" means the accompanying regulations adopted by the Commission.

J. "Related persons" with regard to business entities means two or more persons owned or controlled, directly or indirectly, by the same person. As applied to natural persons, "related persons" mean two or more natural persons who have a legal relationship arising out of marriage, adoption, or blood, through the third degree of kinship.

K. "Return" means any document required to be filed when paying any Kayenta Township tax, as contrasted with other documents required to be filed that are not associated with actual payment of taxes. "Return" also includes any attachments, such as schedules or forms that are associated with any return.

L. "Taxes" means any tax, interest, penalties, and costs, imposed or assessed individually or collectively pursuant to the Ordinance.

M. "Taxpayer" means the person liable for the taxes or the person responsible for collecting and remitting the taxes.

N. "Township" means the Kayenta Township, the entity responsible for the administration of all Kayenta Township tax ordinances.

SECTION 8-105 Assessment of Taxes

A. The taxes imposed by the Ordinance are assessed for a statutory period and are the liability of the taxpayers.

B. The Township is authorized to assess taxes against a person and those assessments are presumed to be correct.

1. When it appears that the return filed by a person understates the taxes due under the Ordinance, the Township is authorized to assess the person for any tax deficiency, interest, penalties, and costs. The assessment is binding on the person but may be appealed in accordance with rules and regulations.

2. If no return is timely filed as required, the Township is authorized to make an estimate of the tax due and to assess the person for that tax, interest, penalties, and costs. This assessment is binding on the person unless shown to be clearly erroneous.

3. If a person fails to provide information within its possession or control which is relevant to a determination of taxes due and which it is required to provide under the Ordinance, the Township is authorized to make an estimate of the tax due and to assess the taxpayer for that tax, interest, penalties, and costs. This assessment is binding on the taxpayer unless it is shown that the estimate, on the basis of the best information then available to the Township, was clearly erroneous or unless the Township for other good cause shown relieves the taxpayer from the operation of this section.

C. Any taxes assessed shall become the liability of the taxpayer on the date due. If the taxpayer is a corporation or a trust or a part thereof, then the corporation or trust shall be liable for the taxes. If the taxpayer is an association, joint venture, limited liability company or partnership, or a part thereof, then all the associates, participants, members or partners, both general and limited, shall be jointly and severally liable for the taxes. Companies shall be treated as corporations or partnerships consistent with their treatment by the Internal Revenue Service.

D. The owners of the interests in a unit or lease shall be jointly and severally liable for the taxes assessed with respect to said unit or lease.

E. The Township shall have the authority to redetermine incorrect or erroneous assessments, to issue amended assessments, if necessary.

SECTION 8-106 Jeopardy Assessments

A. If the Auditor hired or contracted by the Township ("Auditor") believes that the collection of any assessment or deficiency of any amounts imposed by this Chapter will be jeopardized by delay, the Auditor shall deliver to the taxpayer a notice of such finding and demand immediate payment of the tax deficiency declared to be in jeopardy, including interest, penalties, and additions.

B. Evidence that collection of tax due is in jeopardy shall include documentation that:

1. The taxpayer is going out of business;

2. The taxpayer has no Township sales tax license or has no permanent business location in the Township;

3. The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the Township on three (3) or more occasions within the previous thirty-six (36) calendar months;

4. The taxpayer has filed a fraudulent return with the intent to evade tax or has failed to file required tax returns due to the Township on three (3) or more occasions within the previous twelve calendar months;

5. The taxpayer has remitted payment by check, which was dishonored; or

6. The taxpayer has failed to comply with a formal written request of the Auditor made pursuant to Section 8-111.

C. Jeopardy assessments are immediately due and payable, and the Township may immediately begin proceedings for collection. The taxpayer, however, may stay collection by filing, within ten (10) days after receipt of notice of jeopardy assessment, or within such additional time as the Auditor may allow, by bond or collateral in favor of the Township in the amount the Auditor declared to be in jeopardy in his notice.

D. "Bond or Collateral," as required by this Section

1. shall mean either:

   a. a bond issued in favor of the Township by a surety company authorized to transact business in the Nation or in Arizona or approved by the Insurance Department of the Navajo Nation or Arizona as to solvency and responsibility, or

   b. collateral composed of securities or cash which are deposited with, and kept in the custody of, the Auditor; and

2. shall be of such form that it may, at any time without notice, be applied to any tax, penalties, or interest due and payable for the purposes of this Chapter. Securities held as collateral by the Auditor must be of a nature that they may be sold at public or private sale without notice to the taxpayer.

E. If the bond or collateral is not filed within the period prescribed by subsection D(2) above, the Auditor may treat the assessment as final for purposes of any collection proceedings. The taxpayer nevertheless shall be afforded the appeal rights provided in Section 8-132. The filing of a petition by the taxpayer under Section 8-132, however, shall not stay the Township's rights to pursue any collection proceedings.

F. If the taxpayer timely files sufficient bond or collateral, the jeopardy requirements are deemed satisfied, and the taxpayer may avail himself of the provisions of Section 8-132.

G. Within thirty (30) days after the date on which the Auditor furnishes written notice required by Section 8-136, the taxpayer, pursuant to Section 8-132 may request the Town Manager to review the action taken. Within fifteen (15) days after the request for review, the Town Manager shall determine whether both the jeopardy determination and the amount assessed are reasonable.

H. Within thirty (30) days after the Town Manager notifies the taxpayer of the determination he reached pursuant to subsection G above, the taxpayer may seek review by the Administrative Hearing Officer of all or part of the Town Manager's decision. If the Administrative Hearing Officer determines that either the jeopardy determination or the amount assessed is unreasonable, the Administrative Hearing Officer may order the Auditor to abate the assessment, to redetermine any part of amount assessed or to take such other action as the Administrative Hearing Officer deems appropriate.

I. A taxpayer may seek judicial review of all or part of the Hearing Officer's decision by initiating action in the Supreme Court under Section 8-132.

J. An action for judicial review cannot be commenced by either the taxpayer or the Township more than thirty (30) days after receipt by the taxpayer of notice of any refund or assessment recalculated or reduced to conform to the Town Manager's decision, unless the time to commence such an action is extended in writing signed by the taxpayer and the Auditor.

SECTION 8-107 Waiver of Taxes

Any waiver of tax or associated interest requires a unanimous vote of the Commission. The Township Manager has the authority to relieve a taxpayer of penalties and certain administrative fees set forth in Sections 8-112 to 8-116 below.

SECTION 8-108 Nondiscrimination

No provision of this Ordinance shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

SECTION 8-109 Designation of Individual

On an annual basis, each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, by filing a Form 100. The forms must be submitted each year to the Township by January 15, even if no changes have occurred since the prior filing. In addition, an updated form must be filed within thirty (30) days of a change in circumstances. The Commission may by regulation impose requirements as to the individuals who shall be designated under this section, and may require information or documentation it deems necessary for the proper and efficient administration of these taxes to be provided with the designation. For purposes of this only, the term "taxpayers" shall not include persons on whom the Hotel Occupancy Tax is imposed, but shall include persons responsible for collecting and remitting the Hotel Occupancy Tax.

SECTION 8-110 Extension of Time

A taxpayer may request an extension of time for filing. The request must be made to the Township by filing the required extension request form on or before the due date, and an estimated payment of the tax due must be made at the time of the request. An automatic extension of sixty (60) days will be granted by the Township.

SECTION 8-111 Recordkeeping

Every taxpayer shall keep full and true records of all taxable activities, in accordance with regulations.

SECTION 8-112 Interest Imposed

Rates of interest shall be established by regulation. Interest shall be imposed on any unpaid amount of tax from the date the payment was due, without regard to any extension of time or stay of payment, to the date payment is received. The Commission is authorized to set different rates of interest for underpayments and overpayments.

SECTION 8-113 Penalties for Failure to File

A. If any taxpayer fails to timely file any tax return, a penalty shall be assessed for each month or fraction thereof that the return is not filed, in the amount of 5% of the tax due for the period; provided, however, that the minimum amount for the total penalty imposed under this section shall be $50.

B. The total penalty assessed in subsection (A) shall not exceed 25% of the tax due, except where the $50 minimum applies.

C. If a person fails to timely file a Form 100, a one-time $50 penalty shall be assessed for each document that is not timely filed.

D. For purposes of this section, a form filed on or before an extended due date for filing is timely filed.

E. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-114 Penalties for Failure to Pay

A. A taxpayer failing to timely pay an amount of tax by the time due shall be assessed an immediate penalty of 5% of the amount of the underpayment.

B. For each month the payment is overdue, an additional penalty shall be assessed of 5% of the underpayment.

C. The total penalty imposed under this section shall not exceed 10% of the tax due.

D. For purposes of this section. a payment received on or before an extended date for payment is timely paid.

E. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-115 Penalties for Attempt to Evade or Defeat Tax

A. Any taxpayer understating the tax imposed by the Ordinance through negligence of the Ordinance and regulations, but without the intent to defraud, may be assessed a penalty of $250, plus 25% of the underpayment of tax.

B. Any taxpayer understating the tax imposed by the Ordinance through reckless disregard of the Ordinance and regulations, but without the intent to defraud, shall be assessed a penalty of $250, plus 25% of the underpayment of tax.

C. If any part of an understatement of tax is shown to be due to fraud, the taxpayer shall be assessed a penalty of $500, plus 50% of the underpayment of tax.

D. Any person who willfully assists a taxpayer in the fraudulent understatement of tax due under the Ordinance shall be subject to a penalty of $500, plus 25% of the underpayment of tax.

E. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.

F. For good cause shown, the Township may in its discretion relieve the taxpayer from all or part of the penalties imposed under this section.

SECTION 8-116 Charges for Administrative Costs

A. A taxpayer failing to pay any taxes on the due date may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including, but not limited to, attorney fees and other costs of collection.

B. For good cause shown, the Township may relieve the taxpayer from all or part of the charges imposed under this section.

SECTION 8-117 Failure to Comply with Ordinance

A. Any taxpayer who fails to comply with a requirement to designate an individual, to file a return, to provide information or documents, to allow access to equipment within its possession or control, to furnish a surety bond or other security, to comply with a duly issued subpoena, or to comply with a lawful order of the Township, may have all or some of its rights to engage in productive activity within the Township suspended, until compliance is made or for such shorter time as the Township may provide.

B. Upon receipt of a notice of non-compliance issued by the Township, a taxpayer has thirty (30) days in which to come into compliance. If the taxpayer fails to do so, the Township

shall issue a notice of intent to suspend. The taxpayer shall have thirty (30) days in which to come into compliance or to appeal only the notice of intent to suspend pursuant to Section 8-132. This right of appeal is the sole remedy. Failure on the taxpayer's part to act within the thirty (30) days shall result in the Township issuing a final order of suspension. In addition, if an appeal is decided adverse to a taxpayer, the Township shall issue a final order of suspension.

C. The Navajo Nation Division of Public Safety, upon request by the Township, shall enforce the final order of suspension, which shall remain in effect until the taxpayer comes into compliance.

SECTION 8-118 Interference with Administration

A. It shall be unlawful for any person, forcibly, or by bribe, threat or other corrupt practice, to obstruct or impede the due administration of this tax.

B. It shall be unlawful for any person willfully to fail to comply with a subpoena duly issued pursuant to this Chapter.

C. It shall be unlawful for any person to commit fraud, or knowingly to assist another in the commission of a fraud, with the intent to evade or defeat the assessment or collection of any taxes imposed by this Chapter.

D. It shall be unlawful for any person with knowledge and intent to falsely verify by written declaration any return or document.

E. Any Indian who violates any of the provisions of this section shall be guilty of an offense and, upon conviction, shall be sentenced to a term of imprisonment of no more than 180 days, or ordered to pay a fine not to exceed $500, or both, in accordance with the provisions of Title 17, Navajo Nation Code.

F. Any non-member of the Navajo Nation who violates any of the provisions of this section may be excluded from land subject to the jurisdiction of the Township and/or Navajo Nation in accordance with the procedures set forth in 17 N.T.C. subsection 1901-1906.

G. Any person who violates any of the provisions of this section, or whose employees or agents violate any of the provisions of this section may have its rights to engage in taxable sales within all or some of the jurisdiction of the Township temporarily or permanently suspended. The Commission is empowered to order such suspension, provided that it shall first give the person or vendor to be suspended notice of eviction or non-compliance with this Chapter and an opportunity to be heard under Section 8-132, and that any suspension may be appealed pursuant to Section 8-132.

H. Information concerning criminal interference with administration of the Ordinance shall be provided to the Office of the Prosecutor or appropriate authorities for appropriate action.

SECTION 8-119 Collection Powers

A. In accordance with the provisions of the Ordinance, the Township has the power to collect any taxes assessed, including the power to attach and seize the assets of a taxpayer or any property subject to a lien. In addition, the Township has all other powers available for collection of debts owed it.

B. The Township may bring suit or enforcement proceedings in any court of competent jurisdiction. Provided, that the bringing of suit or enforcement proceedings shall not constitute a waiver of sovereign immunity, and, further provided, that the Township shall never be compelled to assert a claim for taxes in litigation by way of counterclaim or otherwise.

SECTION 8-120 Security for Payment

Whenever necessary to secure the payment of any taxes due or reasonably expected to become due, the Township is authorized to require the taxpayer to furnish an acceptable surety bond in an appropriate amount. The Commission shall prescribe by regulation the terms and conditions for requiring such security. For purposes of Section 8-124, the requirement of security for payment shall be considered an adverse action.

SECTION 8-121 Lien for Taxes

A. If a taxpayer fails to pay any taxes after demand or assessment by the Township, or fails to provide security as set forth in Section 8-120, the amount shall be a lien in favor of the Township upon all property or rights to property of those liable under Section 8-105.

B. The lien shall arise at the time the demand or assessment is made, shall attach to all property then owned and thereafter acquired, and shall continue until the amount of the lien is satisfied or released, and shall be effective against related persons without notice.

C. Provided, that with respect to a required return, a lien shall arise for any unpaid taxes at the time filing is due without further demand or assessment.

D. If a lien is required as a condition for granting an extension or stay of payment, such lien shall arise according to the terms of the extension or stay.

E. A lien shall be effective as against other parties upon notice being recorded in the offices of the Township, Navajo Business Regulatory Department and other appropriate agencies in a form available for inspection by the public.

F. The Commission may by regulation exempt certain property from the operation of the lien created by this section.

SECTION 8-122 Priority of Lien

A lien arising pursuant to Section 8-121 shall have priority over all other liens imposed by any government other than the Navajo Nation, regardless of the date of perfection.

SECTION 8-123 Release of Lien

A. The lien shall be released upon payment of the entire liability of the taxpayer on account of whose liability the lien arose.

B. The payment of any part of the liability shall operate to reduce the amount of the lien by the amount paid.

C. Where a lien has been recorded and the Township thereafter receives all or part of the taxes giving rise to the lien, the Township will cause a notation of the complete or partial release of the lien to be made in the record.

D. The Township may in its discretion release liens on certain property without payment of all outstanding liabilities, for good cause, or where the interests of the Township are adequately protected by other security.

SECTION 8-124 Foreclosure of Lien

A. The Township may foreclose upon any or all items of property or rights to property subject to a lien for taxes by seizure and sale, to be conducted as set forth in this section and accompanying regulations.

B. Seizure:

1. After seizure of property or rights to property, the Township shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

2. Any person shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof, to the Township at any time prior to the sale thereof, and upon payment or furnishing of security, the Township shall restore the property to him, and all further proceedings in connection with the seizure of the property shall cease from the time of the payment.

3. A taxpayer may appeal a seizure, and appeals shall be taken pursuant to Section 8-132 under the following conditions:

   a. The seized property shall not be removed from the jurisdiction of the Kayenta Township;

   b. The taxpayer must provide an affidavit identifying all property or rights to property owned or controlled by the taxpayer located within the jurisdiction of the Kayenta Township.

4. The effect of a seizure upon any person for obligations due or payable to a taxpayer or persons liable under Section 8-105 shall be continuous from the date the seizure is first made until the liability out of which the seizure arose is satisfied.

5. Any person in possession of or obligated with respect to property or rights to property which has been seized who, upon demand by the Township, surrenders such property or rights to property (or discharges said obligation) to the Township, shall be discharged from any obligation or liability to the taxpayer or persons liable under Section 8-105 whose property or rights to property were seized.

C. Sale of Seized Property:

1. The Township shall publish a notice of sale, setting forth the time and place of the sale.

2. Proceedings for the sale of property shall be effective to transfer to the purchaser all right, title, and interest therein of the taxpayer or person whose property or rights to property were seized. Provided, that where required by federal law the sale of property shall not be final without the approval of the Secretary of the Interior or his designee.

D. The Township may delegate and empower persons to carry out the procedures of this section, including officers of the Navajo Division of Public Safety, who shall render assistance in this regard on request by the Township.

SECTION 8-125 Application of Proceeds

A. Money seized by the Township, or realized from property or rights to property seized, shall be applied first to the expenses of the seizure and proceedings for the conversion of property, and then to the liability for costs, penalties, interest, and tax, in that order.

B. The balance, if any, shall be remitted to the person or persons who have claimed and proved legal entitlement thereto, provided that the Township may set time limits or other reasonable conditions on the making and proving of such claims.

SECTION 8-126 Interference with Foreclosure

A. No person shall remove from the jurisdiction of the Kayenta Township any property on which there is a lien for taxes pursuant to Section 8-121.

B. No person in possession of or obligated with respect to property or rights to property which have been seized, shall fail to surrender such property or rights or to discharge such obligation upon demand by the Township therefor, except as to any part of the property or rights as is, at the time of the demand, subject to an attachment or execution under any judicial process.

C. Any person violating the provisions of this section shall be personally liable for the value of the property removed or not surrendered, or for the amount of the obligation not discharged, not exceeding the amount for which the seizure was made. Any liability

arising under this section shall be assessed and collected as taxes imposed by the Ordinance.

SECTION 8-127 Transfer of Business

A. If a person buys substantially all of the assets of a taxpayer within the Township, that person shall withhold from the purchase price and pay to the Township the amount of taxes due on account of activities of the taxpayer prior to the purchase.

B. Prior to transfer, a buyer may make a written request and. within forty-five (45) days after the owner's records are made available for audit. the Township shall send a notice to the buyer for the taxes due. Thereafter, the buyer shall not be personally liable under this section for any taxes in excess of the amount stated in the notice. or for any such taxes if no notice is given within the time required.

C. Any buyer failing to make such a request or failing to withhold taxes from the purchase price shall be personally liable up to the value of all the property acquired. Any liability arising under this section shall be assessed and collected as taxes imposed by the Ordinance.

D. No consent to the assignment or transfer of any lease or other rights to engage in productive activity within the Township shall be granted unless the Township first certifies that all applicable taxes have been paid or that payment has been adequately secured.

SECTION 8-128 Mutual Assistance Agreements

The Township is authorized to negotiate mutual assessment and collection assistance agreements with any other tax jurisdiction. The agreements so negotiated will come into force only upon ratification by the Commission.

SECTION 8-129 Prohibition of Suits

No suits for the purpose of restraining the assessment or collection of the taxes imposed under the Ordinance shall be maintained in any court by any person, whether or not such person is the person against whom such taxes were assessed. All actions concerning the application of the Ordinance shall be brought pursuant to Section 8-132.

SECTION 8-130 Statute of Limitations

A. The taxes imposed and required to be collected by the Ordinance shall be assessed within four (4) years after the return is filed, except as provided in subsection (B) of this section.

B. Exceptions to the statute of limitations on assessment:

1. In the case of fraudulent conduct, no period of limitations shall apply.

2. In the case of failure to file a return. declaration of interest, or other required document, no period of limitations shall apply.

3. The running of the period of limitations on assessment is suspended during any period the Township is prohibited by any court from making an assessment.

4. The running of the period of limitations on assessment may be suspended for any period agreed upon between the taxpayer and the Township.

C. Any action in a court or by seizure for collection of taxes imposed by the Ordinance must be commenced within four (4) years of the date of assessment, except as provided in subsection (D).

D. Exceptions to the statute of limitations on collection:

1. The running of the period of limitations on collection is suspended during any period the Township is prohibited by any court from commencing collection proceedings and during any period of appeal under Section 8-132.

2. The running of the period of limitations on collections may be suspended for any period agreed upon between the taxpayer and the Township.

SECTION 8-131 Procedure for Refunds

Any taxpayer believing it has made an overpayment of taxes may file a written claim for refund with the Township. These refund claims must be filed within one (1) year after the alleged overpayment was made. The procedure for refund claims shall be established in the regulations.

SECTION 8-132 Procedure for Appeal

A. Appeals from assessments, denials of refund, or other adverse action shall be made first to the Township according to procedures established in regulations; these procedures shall also apply to any challenges to the validity of the Ordinance. The Commission may permit or require one or more levels of review by the Township or its designees and may provide for hearings before the Commission as a body or its designees. The failure to duly proceed to a next required level of review under this subsection shall constitute a waiver of any further appeal pursuant to this subsection. A final decision pursuant to such regulations shall be final for the Township.

B. Procedures for staying the payment of taxes which are being appealed under subsection (A) of this section may be established in regulations. The Township in its discretion may condition the grant of a stay on the posting of a bond or provision of other security.

SECTION 8-133 Abatement Authority

A. In response to a written request for abatement, or when an assessment is found to be incorrect, the Township may abate any part of the assessment determined to have been incorrectly, erroneously, or illegally made.

B. Upon a compromise of liability and according to the terms of the closing agreement formalizing the compromise, the Township shall abate the appropriate amount of the assessment.

SECTION 8-134 Closing Agreements

A. If in good faith the Township at any time is in doubt of the taxpayer's liability, it may enter into a written closing agreement with the taxpayer that adequately protects the interests of the Township, provided that such agreement shall be subject to review by the Township's legal counsel.

B. If entered into after an appeal has been filed pursuant to Section 8-132, a closing agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the Township may require the provision of security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to the liability or nonliability for payment of taxes relating to the periods referred to in the agreement only, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

SECTION 8-135 Confidentiality Rules

A. Nothing in this section is intended to prevent the publication or disclosure of the names and addresses of registered taxpayers or general information which is otherwise in the public record or generally available to the public upon the making of reasonable inquiry.

B. It shall be unlawful for any employee or former employee of the Township to reveal to any person, other than another employee or legal counsel for the Township, any information contained in the return of any taxpayer or any other information about any taxpayer acquired as a result of his or her employment by the Township, except:

1. Where the taxpayer has given detailed consent in writing to the release of specific information;

2. To an authorized representative of the taxpayer;

3. To an employee of the government of the Navajo Nation for use in connection with the governmental function of said employee, provided that it shall be unlawful for the Navajo Nation employee to reveal said information except as permitted in this section;

4. To an authorized representative of a federal agency, pursuant to the terms of a reciprocal agreement for the exchange of such information;

5. To the taxpayer, in any administrative or judicial proceeding in which that taxpayer has put its own liability for compliance with the Township and Navajo tax laws in

issue, as to all information directly reflecting, referring, or relating to that taxpayer that is not otherwise privileged;

6. In compliance with the order of a hearing officer of competent jurisdiction or any court of competent jurisdiction in which the information sought is material to the inquiry;

7. In recording tax liens on the property of a taxpayer or collecting taxes by levy upon the property or rights to property of a taxpayer;

8. In statistical releases not identifying the information provided as applicable to any single taxpayer;

9. To the extent of revealing whether a taxpayer has or has not made a designation (and, if so, the name and address of that designee), or whether a person is or is not a designee (and, if so, by whom he has been designated); and

10. To the extent of revealing to the purchaser or intended purchaser of a taxpayer or the property thereof the amount and basis of any unpaid taxes for which the seller is liable.

C. For purposes of this section, "employee of the Township" shall include members of the Commission and any person for whose services the Township has contracted, provided that such person shall agree in the contract for services to abide by the provisions of this section.

D. Any Township employee or former employee who violates any of the provisions of this section shall be subject to a civil fine not to exceed $500. The District Courts of the Navajo Nation shall have jurisdiction to hear cases arising under this section, which may only be brought by the taxpayer harmed by the violation of this section.

E. The Township may in its discretion further restrict the disclosure of information, and such restriction shall be considered an adverse action for purposes of Section 8-132.

SECTION 8-136 Notice

The Township may give notice to a taxpayer by mailing the notice to the individual last designated by the taxpayer, at the address shown on the designation. Where a taxpayer has not designated an individual, notice may be given by mailing the notice to the last known address of the taxpayer, or by mailing the notice to a person who is lessee, permittee, or assignee of the affected property, or to a person holding a permit or license for the conduct of the taxable activity. The use of other methods of providing notice, including publication, may be made so long as the method comports with due process.

SECTION 8-137 Investigative Authority

A. For the purpose of enforcing the provisions of the Ordinance, the Township is authorized to inspect property, to examine and require the production of any pertinent records, books, information, evidence, or financial data, and to require the presence of any person

and require testimony under oath concerning the subject matter of an inquiry, and to make a permanent record of the proceeding.

B. As a means for accomplishing the foregoing, the Township is hereby vested with the power to issue subpoenas and summonses, pursuant to regulations.

C. The Navajo Nation courts shall have the power to enforce administrative subpoenas and summonses issued by the Township.

SECTION 8-138 Oaths and Affirmations

Any agent or employee designated by the Township for that purpose is authorized to administer such oaths or affirmations and to certify to such documents as may be necessary under the Ordinance or the regulations.

SECTION 8-139 Receipts; Disbursements

A. There is hereby created in the treasury of the Kayenta Township Tax Administration Suspense Fund.

B. Ten percent (10%) of all money received by the Township as taxes shall be deposited forthwith to the credit of said Fund.

C. Payment of claims for refund shall be disbursed from this Fund, except to the extent that there is a pertinent escrow established pursuant to subsection (E) of this section.

D. At the end of each month, the balance remaining in the Fund, after the payment of refunds under subsection (C) of this section, shall be transferred to the Kayenta Township general fund to be used for providing essential governmental services.

E. Notwithstanding the foregoing, the Commission may in its discretion hold certain contested amounts in escrow, or direct some balance or a percentage of receipts to be maintained in the Tax Administration Suspense Fund from month to month in anticipation of disbursements which may have to be made therefrom.

F. Balances maintained pursuant to paragraph (E) may only be reappropriated by a majority vote of the full Commission.

SECTION 8-140 Severability

If any provision of this Ordinance, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

SECTION 8-141 Effective Date

This subchapter shall become effective on September 1, 2011.

KAYENTA TOWNSHIP
TAX ADMINISTRATION REGULATIONS

SECTION 8.101 TITLE
SECTION 8.102 DEFINITIONS
SECTION 8.103 LAY AND COLLECT TAXES
SECTION 8.104 TOWNSHIP
SECTION 8.105 PROPOSAL OF REGULATIONS
SECTION 8.106 ADOPTION OF REGULATIONS
SECTION 8.107 PROMULGATION OF REGULATIONS
SECTION 8.108 PUBLIC RULINGS AND ADVICES
SECTION 8.109 REQUESTS FOR PRIVATE RULING
SECTION 8.110 PROCEDURAL RULES FOR APPEAL FROM ASSESSMENTS AND ACTIONS
SECTION 8.111 PROCEDURAL RULES FOR COLLECTION
SECTION 8.112 PROCEDURAL RULES FOR EXAMINATION
SECTION 8.113 INTERNAL POLICY MATTERS
SECTION 8.114 PRESUMPTION OF MAILING
SECTION 8.115 RECORDKEEPING
SECTION 8.116 EXAMINATION AND AUDITS
SECTION 8.117 FILING REQUIREMENTS FOR STATUTORILY AND CONTRACTUALLY EXEMPT PERSON
SECTION 8.118 NOTICE OF LIEN
SECTION 8.119 SERVICE AND ENFORCEMENT
SECTION 8.120 REQUESTS FOR INFORMATION
SECTION 8.121 REQUIRED INFORMATION
SECTION 8.122 PLACE AND MANNER OF FILING PAYMENT
SECTION 8.123 DUE DATES AND TIME DETERMINATION
SECTION 8.124 RULE FOR LIABILITIES OVER $10,000
SECTION 8.125 INTEREST RATES AND APPLICATION
SECTION 8.126 DESIGNATION OF INDIVIDUAL
SECTION 8.127 CHARGES FOR ADMINISTRATIVE COSTS
SECTION 8.128 SUSPENSION AND EXCLUSION
SECTION 8.129 EXAMINATION PROCEDURE
SECTION 8.130 NOTICE OF ASSESSMENT
SECTION 8.131 PROCEDURE FOR REFUNDS
SECTION 8.132 DELINQUENT LIABILITIES
SECTION 8.133 COLLECTION
SECTION 8.134 DUTIES OF THE FINANCE DEPARTMENT

SECTION 8.135 ESTABLISHMENT OF ESCROW
SECTION 8.136 EFFECTIVE DATE

Section 8.101. Title.

This subchapter shall be called the Kayenta Township Tax Administration Regulations ("Regulations").

Section 8.102. Definitions.

Subject to additional definitions (if any) contained in the subsequent paragraphs of this subchapter and in other subchapters, and unless the context otherwise requires, in the regulations:

A. "Commission" means the Kayenta Township Commission.

B. "Individual" means a natural person.

C. "Interest" means the interest of any grantee, lessee, permittee, assignee, sublessee, franchisee, or transferee, whether of the whole interest or less than the whole interest in a lease, including the interests of parties to a joint venture or operating agreement.

D. "Period" means the reporting period for each particular tax.

E. "Township" means the Kayenta Township.

Section 8.103. Lay and Collect Taxes.

When appropriate, the Township will submit to the Commission proposed resolutions to lay and collect taxes on goods, services, or property both tangible and intangible, on income from whatever source derived, and on transactions, sales, inventories, and wages completed or earned, and other measures of economic activity or engagement within the Township. The Commission will oversee tax policy and the administration of the tax laws.

Section 8.104. Township.

The Town Manager shall exercise the powers granted to the Township and may employ or engage those persons qualified by education and experience necessary to discharge the duties of the office and may delegate authority and duties among such persons.

Section 8.105. Proposal of Regulations.

The Township may publish notice of proposed regulations in order to provide interested parties an opportunity to comment. Notice of the proposal will be published and the text made available according to Paragraph 8.107. The notice will invite written comments and give a deadline for their submission not less than thirty (30) days after the first publication of notice. The Township may choose to hold a public hearing.

Section 8.106. Adoption of Regulations.

When appropriate, the Commission will adopt regulations. in accordance with the rules in this paragraph.

A. Formal adoption. Regulations must be formally adopted in a resolution by a majority vote of the Commission.

B. Manner of amendment. Regulations must be amended in the same manner as they are adopted and promulgated.

Section 8.107. Promulgation of Regulations.

Following their adoption by the Commission in accordance with Paragraph 8.106, regulations will be promulgated according to these rules.

A. Notice required. The Regulations will be effective only upon the publication of a notice in accordance with subparagraph (B).

B. Publication defined. Publication means to publish a notice by public posting or published in the newspapers for thirty (30) days and may include notice by mail to designated individuals on the basis of a registration list which is reasonably current. The notice will identify or otherwise describe the subject regulations and where they may be obtained.

C. Effective dates. Regulations become effective thirty (30) days after the first publication of notice or on the dates otherwise specified therein.

D. Availability of text. A copy of the regulations will be filed and made available for public inspection at the Township and will be mailed to any person making a written request.

Section 8.108. Public Rulings and Advices.

When appropriate, the Township may issue general rulings, procedures, and advices for the information and guidance of taxpayers. In preparation thereof, the Township may inquire of persons regarding relevant facts, comments. and proposals, providing such persons a reasonable time for their submission.

Section 8.109. Requests for Private Ruling.

In connection with determining any obligation under this subchapter, a taxpayer, designee, or representative may request a private ruling from the Township.

A. Authority. The Township has discretionary authority to issue declaratory rulings concerning the validity or application of the Township tax laws, the regulations, and other rules with respect to any property. person. transaction, activity, or statement of facts. This discretion will be exercised in the light of all relevant circumstances, and with a view to issuing rulings to the extent consistent with the proper and efficient

administration of the tax laws. However, no ruling will be given in any matter already under examination or appeal.

B. Form of request. The request must be made in writing to the Township, must state the ruling sought, and must contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts. The request must identify the taxpayer.

C. Effect. Private rulings are binding on the Township with respect to the facts and issues presented and ruled upon, but only as to the subject property, transactions, or the person requesting the ruling. Private rulings are appealable actions.

Section 8.110. Procedural Rules for Appeal from Assessments and Actions.

A. General Provisions.

1. In all administrative and judicial proceedings governed by this Chapter, the orders, assessments, factual findings, and legal conclusions of the Township or the Commission or its officers are presumed correct unless the taxpayer demonstrates otherwise.

2. In all factual hearings, the taxpayer has the burden of proving, by preponderance of the evidence, the existence of an asserted fact, except where another standard is provided by statute.

3. Appeals from assessments and denials of refund shall be made first to the Town Manager according to procedures established herein and in regulations.

4. The failure to proceed to a next required level of review under this section shall constitute a waiver of any further appeal pursuant to subsection 2, subsection 3, or subsection 4.

B. Conference.

1. Any appeal shall be commenced by filing a request for a conference with the Town Manager. The Town Manager, after receiving a timely request and within a reasonable time, shall confer with the taxpayer. The conferee, auditor, representative of the Financial Department and the taxpayer may agree on a suitable location for the conference or may agree to hold the conference by telephone and to exchange written documentation by mail or electronic mail. The conferee and taxpayer may agree to confer more than once.
2. The request for a conference must identify the dispute notice of assessment or notice of denial of refund or notice of other adverse action, state the determination sought, and contain a short and plain statement of the relevant facts and law.

a. The taxpayer may request a stay of payment of taxes during the period that it seeks review of a notice under this section.

b. Such a request for stay must be made in writing prior to the time payment is due.

c. The conferee may grant a stay of payment of taxes for good cause shown.

d. A stay of payment shall expire pursuant to the terms of a notice lifting the stay, or upon entry of a final order. Payment is due within ten (10) days after the expiration of the stay.

e. Under appropriate circumstances, a stay of payment granted under this paragraph may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

3. If the conferee and the taxpayer resolve any dispute factual or legal issue, then the conferee shall secure a written waiver from the taxpayer stating the basis of the agreement and stating that the taxpayer waives its right to further administrative or judicial review of that issue. No formal record of the conference need be maintained.

4. Within sixty (60) days following the conclusion of the conference, the conferee will issue a written conference decision. If the conferee denies in whole or in part the relief that the taxpayer requests, then the decision shall state the basis for the denial of relief. Within thirty (30) days after the issuance of the decision of the conferee, the taxpayer may appeal the decision to a Hearing Officer in accordance with the procedures provided in subsection (C) of this section.

C. Administrative Hearing Officer.

1. There is hereby established the position of Administrative Hearing Officer who will conduct hearings for the Township in this phase of the hearing process on an on-call basis. The Administrative Hearing Officer ("Hearing Officer") shall work for the Township on a contractual basis; serving at times required for hearings and shall be paid for his/her services. The cost for the Hearing Officer shall be paid by the Township.

2. Appeal to the Hearing Officer commences upon the timely filing of the appeal.

a. The taxpayer's request for relief was denied under subsection (B) of this section.

b. In the case of a taxpayer's appeal involving a request for abatement of an assessment, the taxpayer must pay the taxes, unless a stay of payment was granted and remains in effect in accordance with subsection (B).

c. The taxpayer must file a request for a hearing before a Hearing Officer within thirty (30) days of the issuance of a conference decision.

d. A request for a hearing before a Hearing Officer must be in writing and contain short and plain statement of the facts and law forming the basis for the relief sought. The taxpayer, or its authorized representative. must sign the request for hearing.

e. The Hearing Officer, after receiving the request for a hearing. will endorse the request with the date of filing and proceed to set a time for entry of pre-hearing orders.

3. The Hearing Officer has the authority to enter pre-hearing orders. When necessary, the Hearing Officer may confer with the parties before entering a pre-hearing order. Such order may, for example, eliminate or narrow disputes concerning questions of fact or law, establish identities and subject matter of testimony of witnesses. require the identification and discharge or documents, or provide for the time. place and duration of hearings. Pre-hearing orders will control the course of the hearing.

4. At the request of any party, the Hearing Officer shall issue a subpoena for the attendance of witnesses at hearings and for the production of books. records. maps, documents, or physical evidence.

   a. Action to quash. Any witness subject to a subpoena may petition the Hearing Officer to vacate or modify the subpoena on the witness. The Hearing Officer shall promptly notify the party who requested the subpoena and proceed to rule on the petition. The Hearing Officer may investigate the grounds of the petition or, upon the petition itself, may deny or grant the petition, in whole or in part. The Hearing Officer's ruling on the petition to quash subpoena are not subject to interlocutory appeal to any court.

   b. Non-compliance. Failure to comply with a subpoena issued by the Hearing Officer shall subject the non-complying witness or party to sanctions.

5. Conduct of Hearing. The Hearing Officer shall preside over the hearing and conduct them according to the following provisions.

   a. Service of Documents. All documents filed by any party at a hearing shall be served personally or by first class mail, postage prepaid. at the last known address, on all parties, including the Township, and proof of service must be filed on record.

   b. Evidence, witnesses, and record.

      i. Sworn testimony. Oral evidence shall be taken only on oath or affirmation.

      ii. Witnesses. Each party may call and examine witnesses, introduce exhibits. cross-examine opposing witnesses, impeach any witness regardless of which

party first called the witness to testify, and may rebut any evidence presented. A party, a party's employee, or a party's agent, may be called by the opposing party and be examined as if under cross-examination. The Hearing Officer may question any witness, or may call as a witness any person who is present at the hearing.

iii. Privilege. Any privilege that applies in civil actions before Navajo courts shall be followed.

iv. Admissibility. Any relevant evidence, including affidavits and other forms of hearsay, shall be admitted if such evidence is of the sort upon which responsible person are accustomed to rely on in the conduct of serious affairs. The Hearing Officer shall be liberal in admitting evidence, but objections to its admission, and comments or observations on its weight, are relevant in weighing the evidence. The Hearing Officer may deny admission of evidence that is irrelevant, untrustworthy, or unduly repetitious.

v. The record. All evidence offered and made part of the record shall be the basis of the Hearing Officer's decision. The Hearing Officer shall not consider any other factual information, except for matters officially noticed.

c. Failure to appear. Where after proper notice a taxpayer or its authorized representative fails to appear, the Hearing Officer may proceed with the hearing, dispose of the issues raised, and enter a final order.

d. Continuances. Reasonable continuance may be granted for good cause.

e. Proposed findings and conclusions. Prior to entering an order, the Hearing Officer shall afford the parties a reasonable time within which to submit any post-hearing memoranda, proposed findings of fact, and proposed conclusions of law.

6. Final order:

a. The hearing conducted under this part concludes when the Hearing Officer enters findings of fact, conclusions of law, and a final order.

b. The final order issued by the Hearing Officer shall be a matter of public record, and all final orders issued shall be available for public inspection.

c. The final order issued by the Hearing Officer shall constitute the final action of the Commission and the Township.

Section 8.111. Procedural Rules for Collection.

In addition to the general rules and procedure provided in this subchapter, the Township or the Commission may by ruling or in regulations establish the guidelines and procedures for

the exercise of its power to attach and seize assets and the performance of its other collection duties in an effective manner comporting with due process.

Section 8.112. Procedural Rules for Examination.

In addition to the general rules and procedure provided in this subchapter, the Township may by internal policy establish the guidelines and procedures for the exercise of investigative authority and the conduct of inspections, examinations, and field and office audits.

Section 8.113. Internal Policy Matters.

In addition to the general rules and procedure provided in this subchapter, the Township may by internal policy establish the guidelines and procedures for conducting its business, administering the tax laws, organizing and operating its office, and for effectively discharging its duties and responsibilities, including assessment and enforcement.

Section 8.114. Presumption of Mailing.

Upon showing of certification of mailing by the Township, it shall be presumed that the taxpayer received the mailing in question.

Section 8.115. Recordkeeping.

A. Every person or vendor shall keep full and true records of receipts and taxes collected for each period, in accordance with regulations and shall make these records available at the request of the Township or Commission.

B. In the case of a person or vendor which is part of a corporation, partnership, association or other person, separate accounting records for the person must be maintained.

C. Records required to be kept under this section must be preserved for six (6) years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

D. The Auditor may require the taxpayer to provide and may examine any books, records, or other documents of any person who, in the opinion of the Auditor, might be liable for any tax under this Chapter, for any periods available to him under subsection (C) above.

E. In order to perform any examination authorized by this Chapter, the auditor may issue an Administrative Request for the attendance of witnesses or for the production of documents, as provided by this Section.

F. If within sixty (60) days of receiving a written request for information in the possession of the taxpayer, the taxpayer fails or refuses to furnish the requested information, the Auditor may, in addition to penalties prescribed under Sections 8-113, 8-114 or 8-115 of the Tax Administration Ordinance, impose an additional penalty of twenty-five (25%)

percent of the amount of any tax deficiency which is attributable to the information which the taxpayer failed to provide, unless the taxpayer shows that the failure was due to reasonable cause and not due to willful neglect.

G. The Auditor may use any generally accepted auditing procedures, including sampling techniques, to determine the correct tax liability of any taxpayer. The Auditor shall ensure that the procedures used are in accordance with generally accepted auditing standards.

H. The fact that the taxpayer has not maintained or provided such books and records which the Auditor considers necessary to determine the tax liability of any person does not preclude the Auditor from making any assessment. In such cases, the Auditor is authorized to use estimates, projections, or samplings, to determine the correct tax. Estimates by the Auditor shall be made on a reasonable basis. The existence of another reasonable basis of estimation does not, in any way, invalidate the Auditor's estimate. It is the responsibility of the taxpayer to prove that the Auditor's estimate is not reasonable and correct, by providing sufficient documentation of the type and form required by this Chapter or satisfactory to the Auditor.

Section 8.116. Examination and Audits.

For the purpose of determining an assessment, preparing a required return or form where none has been prepared or filed, determining the correctness of any required return or form, determining the liability of any person for taxes, determining the liability in law or in equity of any transferee or fiduciary of any person for taxes, or collecting any liability, the Township may make an inquiry and may:

A. Examine any books, records, papers, maps, documents, or other data which may be relevant or material to the inquiry.

B. Summon the person liable for the tax or required to file and/or pay, any officer, employee, or agent of that person, any person having possession, custody, or care of information relating to the business of the person liable for tax or required to file and/or pay, or any other person the Township may deem proper, to appear before the Township at the time and place named in the summons and to produce such information and materials, and to give such testimony, under oath, as may be relevant or material to the inquiry.

C. Take such testimony of any such person, under oath, as may be relevant or material to the inquiry.

Section 8.117. Filing Requirements for Statutorily and Contractually Exempt Persons.

The Township may require any person claiming exempt status to file an affirmative statement of exempt status. With respect to any assessment date or period for which a return is not filed, the Township may require a person to file an affirmative declaration that it meets

the exceptions from filing, together with a statement of the amount of any excluded or exempt receipts and the facts on which the claim of exclusion or exemption is based. Upon written request and within a reasonable time allowed, the person must file the statement or declaration required. Failure to comply is subject to the penalties provided for in the Tax Administration Ordinance.

Section 8.118. Notice of Lien.

Public notice of a lien will be effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property.

Section 8.119. Service and Enforcement.

Subpoenas and summonses will be served and enforced according to the following provisions.

A. The Township will serve a subpoena or summons by an attested copy by certified mail or personal delivery to the person to whom it is directed, or if such mail is returned or the person cannot be found, left at the last and usual place of abode or business. On the hearing of an application for the enforcement of the summons, the certificate of service signed by the person serving the subpoena or summons will be evidence of the facts it states. When the subpoena or summons requires the production of books, records, papers, maps, documents, and other data, it will be sufficient if the items are described with a reasonable certainty.

B. Whenever any person neglects or refuses to obey a subpoena or summons, or to produce books, records, papers, maps, documents, or other data, or to give testimony, as required, the Township may impose the sanctions provided by law. The Township may further apply to any court of competent jurisdiction for such order as it deems proper and not inconsistent with the law for punishment of contempts, to enforce obedience to the requirements of the subpoena or summons and to punish the person for his/her default or disobedience.

Section 8.120. Requests for Information.

The Township may require of any and all persons who own interests in leases granted or approved by the Navajo Nation or Township, who engage in business activity within the Township, or are otherwise subject to its jurisdiction, such information as the Township may deem relevant to the efficient administration of this subchapter. Upon a written request by the Township and after reasonable opportunity to comply, those persons must provide the information required. Failure to comply with a request for information will subject a person to the penalties provided for in the Tax Administration Ordinance.

Section 8.121. Required Information.

A. General. Forms to be filed pursuant to this subchapter will be made available by the Township. Persons are responsible for requesting forms as needed. Any filing may be prepared on a clear copy of the official form or a substantially similar form approved by the Township. The information to be included in or filed with the forms will be prescribed in instructions and other rules. Failure to fully and adequately complete a form will subject a person to penalties under the Tax Administration Ordinance. Additional information may be required, sufficient to establish the qualification for any exclusion or exemption from or deduction claimed in the base, or to disclose the detail of transactions.

B. Supplemental material. Supplemental documents may be required and are permitted. For example, statements filed with any federal, state, or local authorities which contain information substantially similar to that required herein may be attached to the form to clarify or support an entry, to disclose a method, to establish a qualification, to provide detail, or as otherwise appropriate. Such statement and other materials must be clearly identified, be referenced to the corresponding entry on the form, and be reconciled to the information therein.

C. Attachments. Any additional information, supplemental material, or other attachment filed with a form is deemed a part of the form itself.

D. Computations on returns. Rounding off to whole dollar amounts of money on returns and information provided by a taxpayer under this section will be permitted as provided in this subsection.

1. When the instructions or return permit, a person may elect to enter any amount required to be reported on such return at the nearest whole dollar amount.

2. The election not to use whole dollar amounts must be made at the time of filing the return, even if not timely filed. Such election may not be revoked after the time prescribed for filing such return, including extensions of time granted for such filing.

3. The taxpayer's election shall be binding only for the period covered by that return and a new election may be made on a subsequent return.

4. The provisions of subparagraph 1 of this subsection apply only to amounts required to be reported on a return. They do not apply to items which must be taken into account in making the computations necessary to determine such amounts.

D. Signature. Any return, form, or other document which is required to be made or filed under this subchapter must be signed and verified by a written declaration made subject to the penalties set forth in the Tax Administration Ordinance.

Section 8.122. Place and Manner of Filing and Payment.

Taxpayers and other persons making filings and payments under this subchapter must comply with the following requirements:

A. Place and address. All filings and payments must be delivered to the Kayenta Township office or mailed to: Kayenta Township, Post Office Box 1490, Kayenta, AZ 86033.

B. Identification. Any payment must be marked with clear identification of the taxpayer, the return or other form, the assessment date or period, and type of liability for which the payment is being made.

C. The payee. The check or other remittance must be made payable to the order of the Kayenta Township.

D. Application of payments. Any payment received by the Township will be applied as described below. The Township will report to the taxpayer the application made and the resulting status of the taxpayer's account and will issue a notice of assessment for any unpaid amount.

1. When a payment is included with a timely filed return, the payment shall be applied first to the tax due for the current period, then to any outstanding penalty, then to any outstanding interest, then to any tax owed for any prior period.

2. When a payment is included with a return which is filed late, the payment shall be applied first to any penalty due for the specified tax period, then to any interest due for the specified tax period, then to any tax due for the specified tax period.

3. When a payment is made with no identification as to application to a particular tax, tax period, or assessment date, the payment shall be applied first to any and all penalties owed for any tax or period, then to any and all interest owed for any tax or period, then to any tax owed for any period.

4. When a payment is made with respect to an audit assessment issued by the Township, the payment shall be applied first to any accrued penalties associated with the assessment, then to any accrued interest associated with the assessment, then to any tax associated with the assessment.

Section 8.123. Due Dates and Time Determination.

The following rules apply in the determination of dates and time:

A. Due date. Due dates are those stated in the subchapters or specified in instructions, forms and notices of the Township. If a due date falls on a Saturday, Sunday, or a legal holiday, then the due date becomes the next working day. Holidays of the Navajo Nation are the same as the federal holidays, with five exceptions: the Nation does not observe Columbus

Day, and it celebrates Navajo Sovereignty Day on the 4th Monday in April, Navajo Memorial Day on June 1, Navajo Code Talker Day on August 14, and Navajo Family Day on the Friday after Thanksgiving. When a holiday falls on a Saturday or Sunday, it is observed on the adjacent Friday or Monday, respectively.

B. Action by mail. Except as provided in Paragraph 8.123, when a taxpayer elects to act by mail, the date of the action is determined by the postmark. For instance, mail postmarked by midnight of the date due is timely made and is deemed made as of that day.

C. Computation of time. In computing and determining the day on which a period of time ends and action is due, the first day is not counted and the actual days elapsed, including Saturdays, Sundays and holidays, are counted.

D. In order to be considered filed with the Township, for purposes of determining timeliness of filing, an actual, original signed return or report must be submitted to the Township. The submission of facsimiles, PDF filings, or other types of email or electronic filing will not constitute filing.

Section 8.124. Rule for Liabilities Over $10,000.

If the tax due with the return or on a specified date is more than $10,000, the payment must be received by the Township not later than the due date and the rule in Paragraph 8.123(B) regarding postmarks does not apply. A taxpayer shall remit by wire or other direct bank transfer according to the instructions of the Township.

Section 8.125. Interest Rates and Application.

Interest is imposed on any unpaid tax.

A. Duration of accrual. Interest is computed from the date the tax was first due (without regard to any extension of time or stay of payment) to the date payment is received.

B. Interest on Underpayments. The rate of interest will be equal to the rate presently used by the Internal Revenue Service for an underpayment by an individual. The Township will issue a quarterly advice to coincide with the Internal Revenue Service announcement in which the current and past rates for both an underpayment and overpayment are listed.

C. Interest on refunds. The rate of interest will be equal to the rate presently used by the Internal Revenue Service for an overpayment by an individual.

Section 8.126. Designation of Individual.

Each taxpayer must designate and provide the mailing address of a natural person for the purposes of notice, together with such other information as may be required by form and instructions.

A. More than one tax. A taxpayer obligated to designate under more than one tax may designate one individual as the designee for all such tax statutes or may designate separate individuals as the designees for each tax. Only one individual is permitted to be a designee for each tax.

B. Joint or common undertaking. Participants in a joint or common undertaking, regardless of their ownership or agreement, or the form of their organization, must designate one individual. If one participant is the operating agent or charged with the management of the undertaking, the designation must be made by that participant.

C. Additional individuals. A taxpayer may also name other individuals to receive the tax publications of the Township. The Township will keep a reasonably current list and will be diligent in mailing to such individuals, notices, regulations, rulings, instructions, and other information in a timely manner.

Section 8.127. Charges for Administrative Costs.

A. Notice. Upon determining any charges for costs, the Township will issue a notice of assessment to the taxpayer. Such assessment shall constitute an adverse action.

B. Costs. Costs will be limited to direct costs and out-of-pocket expenses incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes, and the usual legal expenses for obtaining local court judgments. On good cause shown, the Township may adjust the assessment.

C. Good Cause. A mere mistake, the absence of negligence or of intentional disregard of the regulations, or the presence of substantial issues of interpretation, especially in the case of a deficiency arising upon examination of a return which was timely filed, and all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, may be given due weight in determining good cause.

Section 8.128. Suspension and Exclusion.

A. In addition to possible criminal prosecution under Title 17 of the Navajo Nation Code, any person, including employees or agents in the course of their employment or agency, who engages in the prohibited acts set forth in subparagraph (C) of this section may have its rights to engage in productive activity within the Township suspended, either temporarily or permanently, utilizing the procedures set forth in the Tax Administration Ordinance.

B. In addition, any non-member who engages in the prohibited acts set forth in subparagraph (C) of this section may be excluded from land subject to the jurisdiction of the Township and/or the Navajo Nation in accordance with procedures set forth in Title 17 of the Navajo Nation Code.

C. The following are prohibited acts:

1. Forcibly, or by bribe, threat or other corrupt practice, obstructing or impeding the due administration of any tax;

2. Willfully failing to comply with a subpoena or summons duly issued pursuant to this subchapter;

3. Committing fraud, or knowingly assisting another in the commission of fraud, with the intent to evade or defeat the assessment or collection of any tax, interest, penalty, or costs imposed or assessed; or

4. With knowledge and intent, falsely verifying by written declaration any return, form, or other document.

Section 8.129. Examination Procedure.

Upon completion of the examination of a taxpayer, the Township will provide the taxpayer with a written statement of findings for any determination which alters a liability for tax, interest, or penalties, and will issue a refund or a notice of assessment for any amounts overpaid or due. If no such determination is made, the Township may issue a letter stating that there is no change for the assessment date or period examined.

Section 8.130. Notice of Assessment.

A. A notice of assessment may arise from an initial assessment of taxes, from an estimate of the taxes due when a required return has not been filed, from a deficiency in the amount of taxes reported or paid determined upon examination of a declaration, or from an application of interest, penalties, or charges for costs.

B. The notice of assessment will set forth the requirements for payment and for appealing the assessment in accordance with the rules and procedures for Administrative Appeals.

C. At any time prior to the payment of an assessment or conclusion of an appeal, the Township may amend the notice of assessment. When such amendment is made, the amended assessment may cover all periods covered by the original assessment.

D. When it appears that a taxpayer has made an overpayment, the Township will remit a refund. In this situation, the one-year deadline for the taxpayer to request a refund shall not apply; the taxpayer shall be eligible for any refund/credit for overpayment arising during the periods covered by the assessment.

Section 8.131. Procedure for Refunds.

A. Claim. Any taxpayer who has made an overpayment may, within one (1) year after the alleged overpayment is received by the Township, file a written claim for refund with the Township. However, no claim for refund need be filed if the basis therefor has already

been established under abatement or asserted in an appeal under this subchapter. An issue determined in such an appeal may not be reopened by filing a claim for refund.

B. Adjustment for another tax. The Township may provide for a refund or credit where taxes paid for one period thereafter requires adjustment on account of other taxes for concurrent periods which are later paid.

C. Amended return. A claim may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the basis therefor.

D. Offset. Upon notice from the Township that an overpayment has been made, a taxpayer may offset against the tax due for a current period. A copy of the overpayment notice must be attached to the return.

E. Appeal. Denial of a refund claim shall be considered an adverse action.

F. Determination. If the Township determines, either on a claim for refund under this paragraph or in an appeal on a claim or from an assessment, that the taxpayer has made an overpayment, and no appeal is taken, the Township shall refund the overpayment and applicable interest to the taxpayer.

G. Order on appeal. Where an action of the Township is appealed, the Township shall make a refund of only the overpayment determined by the order in that appeal, plus the applicable interest.

H. Application to unpaid taxes. If a taxpayer entitled to a refund owes unpaid taxes, the refund shall be offset and reduced by such unpaid amounts.

I. Prohibition against any other manner of refund. No refund of or credit for taxes paid shall be made or allowed to any person by any court or agency other than as provided in this paragraph.

Section 8.132. Delinquent Liabilities.

All taxes assessed are a debt due and owing the Township from the taxpayer or other person. If an assessment is not paid when due, the Township may, in addition to the remedies under this subchapter, maintain an action for itself against the delinquent party for the collection of the liability, costs, and other lawful charges thereon. In such action, the Township will have the benefit of all laws which provide remedies against property or rights to property, real or personal, of the person liable for the assessment.

Section 8.133. Collection.

A notice of assessment requires the payment of the amount due by the date stated therein and is collectible as of that date without further notice. Any amount of taxes which are reported

in a return filed by a taxpayer and not paid by the due date is collectible as of that date without further notice and shall accrue interest and penalties until paid. Absent an official stay of payment, any collectible amount is a delinquent liability, and a collection action will commence upon issuance of a demand for payment to the delinquent taxpayer.

Section 8.134. Duties of the Finance Department.

The Finance Department is authorized and directed:

A. To credit all tax monies received from the Township to the Tax Administration Suspense Fund.

B. To keep separate accounts for the Fund and for any escrow accounts established within the Fund.

C. To be accountable to the Township for the accounts and their disposition by regular and timely reports. The Township will timely reconcile the respective accounts.

   1. The reports are confidential and subject to the disclosure rule.

   2. The reports shall be made no less often than monthly, with quarterly summaries.

   3. The reports shall show the amounts deposited and disbursed during the month and will reconcile the beginning and ending Fund balances.

D. To disburse refunds as directed by the Township.

Section 8.135. Establishment of Escrow.

The Township may establish escrow accounts with an acceptable fiduciary agency, and may prescribe the procedures and accountability required for the custody and management of the monies placed in those accounts.

Section 8.136. Effective Date.

These regulations shall become effective as of September 1, 2011.

CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES

SUBPCHAPTER 2
HOTEL OCCUPANCY TAX

SECTION 8-201 TITLE. 2
SECTION 8-202 DEFINITIONS. 2
SECTION 8-203 TAX IMPOSED. 2
SECTION 8-204 RATE OF TAX. 2
SECTION 8-205 COLLECTION AND REMITTANCE OF TAX. 2
SECTION 8-206 EXCEPTION: PERMANENT RESIDENT. 3
SECTION 8-207 RETURN AND PAYMENT. 3
SECTION 8-208 RECORDKEEPING. 3
SECTION 8-209 SEVERABILITY. 3
SECTION 8-210 EFFECTIVE DATE. 3

HOTEL OCCUPANCY TAX ORDINANCE

SECTION 8-201 Title

This subchapter shall be known as Subchapter Two, Hotel Occupancy Tax, of Chapter 8, Kayenta Township Tax Ordinances.

History

KTCS-72-11 (Sept. 12, 2011) adopted the HOT ordinance.
KTCM-10-15 (May 27, 2015) amended Rate of Tax and Tax Rate regulation

SECTION 8-202 Definitions

A. "Hotel" means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, nursing home, or a room in a dormitory operated by a religious organization, school or college for use by its students, faculty, or staff.

B. "Commission" means the Kayenta Tax Commission.

C. "Effective Date" means the date specified in Section 8-210.

D. "Owner" means any person owning, operating, managing or controlling any hotel within the jurisdiction of the Kayenta Township.

E. "Period" means a calendar quarter or any other reporting period established by regulation.

F. "Township" means the Kayenta Township, the entity responsible for the administration of this ordinance.

SECTION 8-203 Tax Imposed

A. A tax is imposed on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing two dollars ($2) or more each day.

B. The price of a room in a hotel does not include the cost of food served by the hotel and the cost of personal services performed by the hotel for the person, except for those services related to cleaning and readying the room for use or possession.

SECTION 8-204 Rate of Tax

The rate of the tax imposed by this subchapter shall be eight percent (8%) and changed from time to time by the Commission.

SECTION 8-205 Collection and Remittance of Tax

A. An Owner owning, operating, managing, or controlling a hotel shall collect for the Commission the tax that is imposed by this subchapter and that is calculated on the amount paid for room in the hotel.

B. An Owner owning, operating, managing, or controlling a hotel shall remit to the Township the money collected for the tax that is imposed by this subchapter.

SECTION 8-206 Exception: Permanent Resident

This subchapter does not impose a tax on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

SECTION 8-207 Return and Payment

On the last day of each period, an Owner required to collect the tax imposed by this subchapter shall pay the Commission the tax collected during the preceding period, and at the same time shall file with the Commission a return stating:

1. The total amount of the payments made for rooms at the Owner's hotel during the preceding period;

2. The amount of the tax collected by the Owner during the preceding period; and

3. Other information that the Commission requires to be in the return. Provided, that the Commission shall be authorized to assess against an Owner responsible for the collection of taxes under this subchapter, and that such assessments are presumed to be correct.

SECTION 8-208 Recordkeeping

A. It shall be the duty of every Owner to keep accurate and complete books and records to which the Township representative shall at all times have full access during reasonable business hours.

B. Records required to be kept must be preserved for six years beyond the time payment of tax is made, or if no payment is due, for six years beyond the end of the period to which the records relate.

SECTION 8-209 Severability

If any provision of this subchapter. as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the subchapter which can be

given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

SECTION 8-210 Effective Date

This subchapter shall become effective as of October 1, 2011.

KAYENTA TOWNSHIP
HOTEL OCCUPANCY TAX REGULATIONS

SECTION 8.201	TITLE
SECTION 8.202	TAX IMPOSED
SECTION 8.203	TAX RATE
SECTION 8.204	ADMINISTRATION
SECTION 8.205	TERMS AND USAGE
SECTION 8.206	LIABILITY FOR TAX
SECTION 8.207	CHARGES SUBJECT TO TAX
SECTION 8.208	CHARGES NOT SUBJECT TO TAX
SECTION 8.209	PACKAGE DEALS
SECTION 8.210	EXEMPTIONS
SECTION 8.211	GROSS RECEIPTS DETERMINATION
SECTION 8.212	FILING OF RETURNS
SECTION 8.213	PAYMENT OF TAX DUE
SECTION 8.214	OTHER RETURN REQUIREMENTS
SECTION 8.215	EFFECTIVE DATE

Section 8.201. Title.

This subchapter shall be called the Kayenta Township Hotel Occupancy Tax Regulations ("Regulations").

Section 8.202. Tax Imposed.

A tax is imposed for each period on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays for the use or possession or for the right to the use or possession of a room or space in a hotel costing $2 or more each day. Provided, however, that no tax shall be imposed upon any person who receives the complimentary use of a room and does not pay for that use.

Section 8.203. Tax Rate.

Effective June 1, 2015, the rate of tax shall be eight percent (8%) of the price paid for a room in a Hotel as defined below in Section 8-205.

Section 8.204. Administration.

The Kayenta Township is empowered to administer this tax. See the Kayenta Township Tax Administration Regulations for general administrative provisions and procedures.

Section 8.205. Terms and Usage.

Subject to the definitions contained in the Kayenta Township Tax Administration Regulations and subsequent paragraphs of this subchapter, and unless the context otherwise requires, in this subchapter the following terms are used for the meanings given.

A. "Charges for personal services" means charges which are unrelated to the cost of the actual occupancy of the room or rooms. Charges for personal services do not include charges which are related to the cleaning and preparing a room for occupancy.

B. "Commission" means the Kayenta Township Commission.

C. "Gross receipts" means amount paid by the lodger for charges related to the cost of the actual occupancy of the room or rooms. "Gross receipts" does not include any occupancy tax paid by the lodger.

D. "Hotel" means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist court, lodging house, inn, or rooming house, but does not include a hospital, sanitarium, nursing home, or a room in a dormitory operated by a religious organization, school or college for use by its students, faculty, or staff.

E. "Occupancy" means the use or possession. or the right to the use or possession, of any room or rooms in a hotel for any purpose.

F. "Owner" means any person owning, operating. managing or controlling any hotel within the jurisdiction of the Kayenta Township.

G. "Period" means a calendar quarter. The first quarter is composed of the months of January, February, and March; the second quarter is composed of the months of April, May, and June; the third quarter is composed of the months of July, August, and September; and the fourth quarter is composed of the months of October, November, and December.

H. "Person" means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, corporation. or government (other than the government of the Navajo Nation). or any part. division, or agency of any of the foregoing, and an individual or group of individuals.

I. "Room" means any room in a hotel for the use of which the hotel receives consideration.

J. "Tax" means the Hotel Occupancy Tax.

Section 8.206. Liability for Tax.

The Owner is liable for taxes assessed whether or not the Owner collects the tax from the person. In the event the Owner fails to separately state and collect the tax from the person, the tax due will be computed based on the gross receipts.

Section 8.207. Charges Subject to Tax.

All charges for items or services, other than personal services or charges for the use of a telephone, which are furnished in connection with the actual occupancy of the room, are subject to the hotel occupancy tax. The taxable charges include charges for the use of a television and charges for the furnishing of additional beds or cots. These charges are includable within the tax base whether or not separately stated.

Section 8.208. Charges not Subject to Tax.

Charges for personal services are not subject to the hotel occupancy tax if they are separately stated. These include, but are not limited to, the cost of food served by the hotel, charges for room service, messenger service, and valet service.

Section 8.209. Package Deals.

If a hotel includes meals, admission to tourist attractions or any other unrelated benefit in the charge for lodging, hotel occupancy tax must be paid on the entire amount. Only if these

charges are separately stated on the bill to the customer may they be deducted from the amount subject to tax.

Section 8.210. Exemptions.

No tax is imposed on a person who has the right to use or possess a room in a hotel for at least 30 consecutive days.

Section 8.211. Gross Receipts Determination.

The tax shall be reported for each period on the following bases:

A. In general. The calculation of hotel gross receipts for the period, and the recognition of the includable hotel gross receipts, will be made on the basis of the methods regularly applied in maintaining the books and records of the Owner.

B. Improper method. If there is no method, or a method is not regularly applied or does not clearly reflect hotel receipts, the Commission will apply such method or methods as it determines will clearly reflect hotel gross receipts.

C. Special methods. Where a special method is used to calculate hotel gross receipts or to recognize gross receipts, it must clearly reflect gross receipts, or such method will be used as is determined by the Commission to clearly reflect gross receipts.

D. Change of method. A method must be used consistently from period to period, and any change of method must be approved by the Commission.

Section 8.212. Filing of Returns.

The return required to be filed under this subchapter is the Hotel Occupancy Return(s), Form 200 SF or Form 200 LF.

A. Return required. The return will report hotel gross receipts and the tax due for the period and must be filed for each period by every Owner. An Owner who owns, operates, manages, or controls three or more hotels in the Navajo Nation must file the 200LF. If the number of hotels reported is two or less, the 200SF may be filed.

B. Form and instructions. Forms and instructions will be mailed to any person making a written request. A return may be filed on a clear copy of the official form.

C. Time and place for filing. For a given period, the return is due on or before the last day of the following period. Example: The return for the period ending March 31 must be filed on or before the last day of June. It must be filed with the Finance Department of the Kayenta Township.

Section 8.213. Payment of Tax Due.

The tax is due and payable at the time and place for filing the return.

Section 8.214. Other Return Requirements.

Each owner must file a Form 201 annually. In addition. each hotel is responsible for requiring exempt lodgers to complete a Form 202 exemption certificate.

Section 8.215. Effective Date.

These regulations shall become effective as of June 1. 2015.

CHAPTER 8
KAYENTA TOWNSHIP TAX ORDINANCES

SUBCHAPTER 3
BUSINESS SALES TAX

SECTION 8-301	TITLE
SECTION 8-302	PURPOSES
SECTION 8-303	NONDISCRIMINATION
SECTION 8-304	DEFINITIONS
SECTION 8-305	TAX IMPOSED
SECTION 8-306	GOODS DELIVERED OUTSIDE OF KAYENTA
SECTION 8-307	RATE OF TAX
SECTION 8-308	EXEMPTIONS AND DEDUCTIONS
SECTION 8-309	AVAILABILITY OF EXEMPTION CONDITIONED ON COMPLIANCE WITH LAW
SECTION 8-310	EXEMPT SALES TO BE REPORTED
SECTION 8-311	EXEMPTION CERTIFICATES REQUIRED
SECTION 8-312	BUSINESS LICENSE FEE
SECTION 8-313	COLLECTION OF TAX
SECTION 8-314	SEVERABILITY
SECTION 8-315	EFFECTIVE DATE
SECTION 8-316	REPEALS

BUSINESS SALES TAX ORDINANCE

SECTION 8-301 Title

This Subchapter shall be known as Subchapter Three. Business Sales Tax Ordinance, of Chapter 8 of the Kayenta Township Tax Ordinances.

History

CJA-3-96 (Jan. 19, 1996)	The Navajo Nation Council approved the Kayenta Tribal Pilot Sales Tax Project and a plan of operation for such project.
CN-76-96 (Nov. 1, 1996)	The Navajo Nation Council approved an amendment to the Kayenta Tribal Pilot Sales Tax Project.
CJY-42-03 (July 25, 2003)	The Navajo Nation Council extended the Kayenta Tribal Pilot Sales Tax Project indefinitely.
KTCAU-35-02 (Aug. 18, 2002)	The KTC approved Amendment No. 1 to increase the rate of tax and other amendments.
KTCA-20-04 (April 19, 2004)	The KTC approved Amendment No. 2 to adopt certain clarifications and improvements.
KTCS-73-11 (Sept. 12, 2011)	The KTC approved Amendment No. 3 to delete the tax administration provisions, which were incorporated into the new Kayenta Township Tax Administration Ordinance.
KTCJA-02-13 (Jan. 14, 2013)	The KTC approved Amendment No. 4 to adopt certain technical amendments.

SECTION 8-302 Purposes

The purposes of this Subchapter are:

1. To enhance the general well-being of the members of the Navajo Nation residing within the Township;

2. To promote the economic growth of the Kayenta Township;

3. To provide operating capital for the infrastructure development and maintenance within Kayenta Township;

4. To enhance the governmental capacity of the Township to meet the needs of its citizens and others for municipal and other governmental services in the Township; and

5. To support the capital improvements needs of the Kayenta Township.

SECTION 8-303 Nondiscrimination

No provision of this Subchapter shall be construed as imposing a tax which discriminates on the basis of whether a taxpayer is owned or controlled by members of the Navajo Nation.

SECTION 8-304 Definitions

As used in this Subchapter:

1. "Commercial Consumption" means the use connected with trade or commerce and includes:

a. The use of services or products by retail establishments, hotels, motels, restaurants, warehouses, and other commercial establishments;

b. Transportation of people or property by land, water, or air;

c. Agricultural uses unless specifically exempted by this Subchapter; and

d. Real property contracting work.

2. "Commercial Lease" means the lease or rental of any real property for consideration for use as office space, operation of a business, storage of vehicles, or residential occupancy for more than 30 days. Home site residential leases are not included in this definition.

3. "Commission" means the Kayenta Township Commission.

4. "Component Part" includes without limitation:

a. Poultry, dairy, and other livestock feed and their components;

b. Baling ties and twine used in the baling of hay and straw;

c. Fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales and for providing power for off-highway type farm machinery; and

d. Feed, seeds, and seedlings.

5. "Compounded" means to form a whole product with new properties, to produce or create by combining two or more parts or elements or substances.

6. "Contractor" means any person who undertakes to or offers to undertake to, or purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any road, highway, bridge, parking area, fence, livestock guard, gate, building, stadium, or other structure, airport, railway, or similar transportation facility; park, trail athletic field, golf course, dam, reservoir, canal ditch, culvert, sewerage or water treatment facility, power plant, pumping station, natural gas compressing station, gas processing plant and gathering lines, coal gasification plant, refinery, distillery, blending, or similar facility; sewerage, water, coal, coal slurry, gas, or other pipeline; transmission line, radio, television, microwave, telephone, or other similar tower; water, oil, gasoline, fuel or other storage tank; shaft, tunnel, or other mining appurtenance; microwave station or similar facility; leveling, clearing, or other preparation of land; excavating of earth; drilling wells of any type, including seismograph shot holes or core drilling; or other structure, project, development, or improvement to real property, or to do any part thereof.

7. "Construction contractor" includes general contractors, subcontractors, specialty contractors, prime contractors, and any person receiving consideration for the general supervision and/or coordination of such a construction project except for remediation contracting. This definition shall govern without regard to whether or not the construction contractor is acting in fulfillment of a contract.

8. A "taxable contractor" is a person who supervises, performs, or coordinates the construction with any subcontractors or specialty contractors, and is responsible for the completion of the prime contract.

9. "Medicine" means:

   a. Insulin, syringes, blood sugar monitoring strips or devices, and any legend drug prescribed for the treatment of human ailments by a person authorized to prescribe treatments and dispensed on prescription filled by a registered pharmacist, or supplied to patients by a licensed physician, surgeon or podiatrist:

      i. A legend drug is a drug on a prescription.

      ii. A "legend drug" is a drug that bears the statement CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT PRESCRIPTION.

   b. Any medicine or compounded product dispensed to patients in any hospital, infirmary, or clinic located within the exterior boundaries of the Township, provided that the medicine is dispensed by a registered nurse, pharmacist or licensed physician;

   c. Any item used in the practice of traditional Navajo medicine, provided the item is used for such purposes;

   d. Any medical oxygen, prosthetic devices, or other medical devices, monitoring devices, dentures, hearing aids, crutches, prescription eyeglasses and contact lenses, or any durable medical equipment primarily and customarily used for medical purposes, or stoma supplies prescribed by a physician or administered under the direction of a physician, registered nurse, or paramedic customarily used for medical purposes and not useful in the absence of illness, injury, or other medical condition.

   e. "Medicine" does not include any alcoholic beverage.

10. "Person" means any organization, whether it be a sole proprietorship, partnership, joint venture, trust, estate, unincorporated association, limited liability company, corporation, or government, or any part, division, or agency of any of the foregoing, including enterprises and corporate entities owned by the Navajo Nation or by an individual or group of individuals.

11. "Purchase Price" means the amount paid or charged for tangible personal property or any other taxable item or service under Section 8-305, excluding only cash discounts taken or any excise tax imposed on such purchase by the federal government.

12. "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

13. "Retail sale" means:

    a. Any sale within the Township or tangible personal property or any other taxable item or service under Section 8-305, other than a "sale for" (meaning wholesale) resale of such property item, or service by a retailer or a wholesaler to a user or consumer.

    b. "Retail sale" includes sales by any farmer or other agricultural producer of poultry, eggs, or dairy products to consumers if such sales have an average monthly sales value of $1,000 or more.

14. "Retailer" means:

    a. Any person in a regularly organized retail business in tangible personal property or any other taxable item or service under Section 8-305, and selling to the user or consumer and not for resale (meaning wholesale), and includes commission merchants, auctioneers, and all persons regularly engaged in the business of selling to users or consumers within the Township.

    b. "Retailer" does not include contractors, peddlers, farmers, gardeners, stockmen, poultry men, or other growers or agricultural producers producing and doing business on their own premises, except those who are regularly engaged in the business of buying or selling for a profit.

    c. When in the opinion of the Commission it is necessary for the efficient administration of this Subchapter to regard salespersons, representatives, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, or employers under whom they operate or from whom they obtain the tangible personal property sold to them, irrespective of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, or employers, the Commission may regard such dealers, distributors, supervisors, or employers as retailers for purposes of this Subchapter.

15. "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable item or service under Section 8-305 for a consideration. It includes without limitation:

    a. Installment and credit sales;

b. Any closed transaction constituting a sale;

c. Any sale of electrical energy, water, gas, services, or entertainment taxable under this Subchapter;

d. Any transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price;

e. Any transaction under which a right to possession, operation or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if an outright sale were made;

f. Any "construction" meaning addition to, subtraction from, alteration. repair. improvement, movement, wrecking, or demolishing any building, highway. road. railroad, excavation, or other structure, project, development, or improvement to real property. or to do any part thereof for compensation; and

g. Professional services (but does not include labor costs or delivery charges exempted under Section 8-308).

16. "Nation" means the government of the Navajo Nation and the lands subject to its jurisdiction. For the purposes of this section, the term "Nation" does not include enterprises or corporations owned by the Navajo Nation or any of its political subdivisions.

17. "Peddler" means a person who acquires or offers goods for sale within the boundaries of the Township, but does not operate an ongoing business from a fixed location or site within the boundaries of the Township.

18. "Service Industries" means work done for others as an occupation or business such as housecleaning, installation, maintenance, or repairs of tangible personal property done or guaranteed by a dealer or manufacturer.

19. "Storage" means any keeping or retention of tangible personal property or any other taxable item or service under Section 8-305 within the Township for any purpose. except sale in the regular course of business.

20. "Tangible personal property" means:

a. All goods, wares, merchandise, produce and commodities;

b. All tangible or corporeal things and substances which are dealt in or capable of being possessed or exchanged;

c. Water in bottles, tanks, or other containers; and

d. All other physically existing articles or things. including property severed from real estate.

21. "Tangible personal property" does not include:

    a. Real estate or any interest therein or improvements thereon;

    b. Bank accounts, stocks, bonds, mortgages. notes and other evidence of debt;

    c. Insurance certificates or policies:

    d. Personal or governmental licenses;

    e. Water in pipes, conduits, ditches. or reservoirs: or

    f. Currency or coinage constituting legal tender of the United States or of a foreign nation.

22. "Telephone" means cellular phones. telecommunications, facsimile machines, or any device that transmits voice or digital messages over a wire, via satellite or transmission to and from a transceiver.

23. "Township" means the Kayenta Township.

24. "Use" means:

    a. The exercise of any right or power over tangible personal property under Section 8-305, incident to the ownership or the leasing of that property, item, or service.

    b. "Use" does not include the sale. display, demonstration, or detail of that property in the regular course of business and held for resale.

25. "Vendor" means any person receiving any payment or consideration upon a sale of tangible personal property or any other taxable item or service under Section 8-305, or to whom such payment or consideration is payable including all persons who do business on an ongoing business within the Township.

26. "Telecommunications" means the gross proceeds of sales or gross income derived from the business, including the gross income derived from tolls, subscriptions and services on behalf of subscribers or from the publication of a directory of the names of subscribers of the business of providing intra-Navajo Nation telecommunications services. Intra-Navajo Nation telecommunications services means transmitting signs, signals, writings, images, sounds, messages, data or other transmitted information that originates and terminates in the Navajo Nation. Telecommunications does not include

internet access that enables users to access content, information, electronic mail or other services other the internet.

SECTION 8-305 Tax Imposed

A. There is levied a tax on the purchaser for the amount paid or charged on the sales or gross income derived from the sale of the following:

1. Retail sales of tangible personal property made within the boundaries of the Township. Sales by the Navajo Nation government or any political subdivision thereof and sales by corporations and enterprises owned by the Navajo Nation shall be fully subject to the tax imposed by this chapter at the rate established by the Commission. In cases where a person is partially owned by the Navajo Nation government or any of its subdivisions, corporations or enterprises, gross receipts shall be prorated if necessary;

2. Professional services, but does not include retail labor costs and delivery charges exempt under Section 8-308 performed within the boundaries of the Township;

3. Construction on real property within the boundaries of the Township;

4. Amounts paid to common carriers or telephone or telegraph corporations, whether the corporations are privately or publicly owned, for all transportation, telephone service (including cellular, cable, or satellite telephone service), and other telecommunications services provided to residential and commercial consumers within the Township;

5. Gas. electricity, water, heat, coal, fuel oil, or other fuels sold or furnished for residential or commercial consumption;

6. Meals sold, including all hot or cold food prepared for consumption on the premises or taken home, including within a Bed and Breakfast facility;

7. Food for home consumption except for food exempt under Section 8-308;

8. Admission to any place of amusement, entertainment, or recreation, including seats and tables reserved otherwise, and other similar accommodations, including the amusement income for coin operated games and juke boxes;

9. Services for repairs or renovations of tangible personal property or services to install or incorporate tangible personal property into the construction of real property;

10. Cleaning or washing of tangible personal property, including without limitation car washes. laundry or dry cleaning services;

11. All machines that are operated by or through coins, tokens, credit cards, debit cards or other similar payment devices;

12. Leases and rentals of tangible personal property if the property site is within the boundaries of the Township, if the lessee took possession within the Township, or if the property is stored, used, or otherwise consumed within the Township;

13. Long term rental income from hotels, trailers, trailer courts, apartments, townhouses, houses and housing subdivisions that are operated as a business;

14. Tangible personal property stored, used or consumed within the Township;

15. The gross income derived from tours that originate within the Township limits, including without limitation car and bus tours and air flights;

16. The gross income derived from the business activity of operating a hotel, motel or bed and breakfast charging lodging and/or lodging space furnished to any person, for any period of not more than thirty (30) days;

17. The gross income derived from a business activity for printing, faxing, copying, or publishing of printed materials; and

18. Services including cosmetology and haircutting, house and carpet cleaning, and tax preparation and other small businesses, including those operated out of residences, whether or not permitted by the residential or home site lease.

B. If the sales tax is not separately stated on the sales invoice and collected from the customer, the business is liable for the factored tax due.

SECTION 8-306 Goods Delivered Outside Kayenta.

"Out of Town sales" means sales of goods or services where possession or exchange of title is exchanged outside the boundaries of the Township. There shall be no sales tax on goods and services that are sold and delivered outside the Township boundary. Such goods and services include, but are not limited to:

1. Propane, concrete, and repair materials transported to an address outside the boundaries of the Township;

2. Retail installations of tangible personal property (not attached to real property) at an address outside the boundaries of the Township;

3. Delivery or freight charges to a destination outside the boundaries of the Township;

4. Shipping of tangible personal property to a point outside the boundaries of the Township;

5. Sales of tangible personal property when the purchaser does not take possession of the tangible personal property within the Township, but rather has the property shipped to an address outside the boundaries of the Township;

6. If the purchaser takes possession of the tangible personal property within the boundaries of the Township, the sale is not considered an out of town sale. and therefore not exempt from retail sales tax; or

7. The business or person or vendor shall maintain a record of the out of town shipment in a written form such as an address on the invoice, shipping costs relative to the delivery to an address outside of the Township, postal receipts. or common carrier charges.

SECTION 8-307 Rate of Tax

The tax imposed by this Chapter is imposed at a rate of not less than three percent (3%). nor more than eight percent (8%), which shall be specifically established by regulations promulgated by the Commission. Until another rate is established. the rate shall be five percent (5%) of the applicable gross receipts from all retail sales.

SECTION 8-308 Exemptions and Deductions

A. The following sales and uses are exempt from the taxes imposed by this Subchapter.

1. Sales of medicine and emergency and non-emergency medical transportation;

2. Purchases of food with food stamp coupons issued by the United States Department of Agriculture under the Food Stamp Act of 1977 (P.L. 95-113) or purchases paid for by vouchers issued under Section 17 of the Child Nutrition Act (P.L. 95-627 and P.L. 99-669);

3. Sales of meals served to schools, churches, or charitable institutions;

4. Sales by religious or charitable institutions in the conduct of their regular or ordinary religious or charitable functions or activities;

5. Property brought into the Township by a nonresident for his or her own personal use or enjoyment while within the boundaries of the Township;

6. Isolated or occasional sales by persons not regularly engaged in the business of selling same;

7. Sales of newspapers or newspaper subscriptions;

8. Tangible personal property, other than money, traded in as full or part payment of the purchase price;

9. Sales of motor fuels and special fuels, such as jet fuel, gasoline or diesel fuel.

10. Sales or use of property which the Township is prohibited from taxing under the laws of the Nation or applicable laws of the United States;

11. Property stored within the Township for resale;

12. Construction subcontracting within the Township, provided the subcontractor has written evidence that he is working for a taxable, licensed construction contractor within the Township;

13. A farm or ranch operation may exclude from its gross receipts any amount derived directly from farming or livestock activities within the Township.

B. The following shall be deducted from gross receipts on which the sales tax imposed by this Subchapter:

1. A vendor may exclude sales taxes already paid by another vendor where the sales tax is separately stated on an invoice;

2. The cost of raw materials imported into the Township to be used in the process of manufacturing goods;

3. Labor costs directly related to retail installations, service industries and construction contracting; and

4. Delivery charges.

SECTION 8-309 Availability of Exemption and Deductions Conditioned on Compliance With Applicable Law

The availability of any of the exemptions and deductions specified in Section 8-308 of this Subchapter is strictly conditioned on compliance with this Subchapter, other Township laws and regulations, and any other applicable Navajo or federal law and regulations.

1. A person or vendor must be in compliance with the requirements of the Navajo Preference in Employment Act, the Navajo Business Procurement Act, the Navajo EPA or any other law of the Navajo Nation or the Township.

2. In the event that a person or vendor is not incompliance with Subsection (1) above, the Commission shall not allow any of the exemptions and deductions specified in Section 8-308 to the non-complying person or vendor.

SECTION 8-310 Exempt and Deductible Sales to be Reported

The sales or uses exempt or deductible under Section 8-308 shall be reported to the Township by the seller, vendor, or purchasers, as the case may be. The Township shall disallow any exemption or deduction included in this section upon failure by the seller, vendor, or purchaser to report the full amount of such exempt sales.

SECTION 8-311 Exemption Certificates Required

A. For the purpose of the proper administration of this Subchapter and to prevent evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal property or any taxable item or service subject to tax pursuant to this Subchapter and sold by any person for delivery within the Township is sold for storage, use, or other consumption in the Township unless the person selling such property, item or service has obtained from the purchaser an exemption certificate signed by and bearing the name and address of the purchaser to the effect that the property, item, or service was exempted under this Subchapter.

B. The Commission, by regulation, shall define the procedure to be utilized in applying for and obtaining such exemption certificates, and shall further determine the information required to be contained therein.

SECTION 8-312 Business License Fee

A. All persons doing business in the Township shall pay a business license fee of $100 per annum notwithstanding the lack of a business site lease. All persons operating a business in a location within the Township shall have a valid business license before conducting business.

B. It is unlawful for any person required by this Subchapter to collect sales or use tax, to engage in business with the Township without first having obtained a license to do business. This license shall be granted and issued by the Township. The license is not assignable and is valid only for the person in whose name it is issued until that person ceases to do business or changes his or her business address, or until the license is revoked by the Commission. Such license shall be granted only upon application stating the name and address of the applicant and other information the Township may require. If business is transacted at two or more separate places by one person, a separate license for each place of business shall be required. Licenses shall be renewed annually. The Commission shall, on reasonable notice and after a hearing, revoke the license of any person violating any provisions of this Subchapter. Any person required by this Subchapter to collect sales or use tax within the Township without having secured a license to do so shall be deemed to have interfered with the administration of Township taxation. No license is required for any person engaged exclusively in the selling of commodities which are exempt from taxation under this Subchapter.

C. Each person filing contract bids with the Township or any of its political subdivisions for sale of tangible personal property or any other taxable item or service under this Subchapter shall include with the bid the sales tax license number issued to that person under Subsection (A).

SECTION 8-313 Collection of Tax

A. Each vendor is responsible for the collection of the sales or use tax imposed under this Subchapter. The vendor is not required to maintain a separate account for the tax collected, but is deemed to be a person charged with receipt, safekeeping, and transfer of public moneys.

B. Each person storing, using or consuming tangible personal property under Section 8-305 is liable for the use tax imposed under this Subchapter.

C. If any sale of tangible personal property or any other taxable item or service under Section 8-305 is made by a wholesaler to a retailer, upon the representation by the retailer that the personal property purchased is purchased by the retailer for resale, and the personal property thereafter is not resold, the wholesaler is not responsible for the collection or payment of the tax imposed on the sale, but the retailer is solely liable for the tax.

D. Each vendor shall pay or collect and remit the sales and use taxes imposed by this Subchapter, if within the Township such vendor or its agent or other representative:

1. Has or utilizes an office, distribution house, sales house, warehouse, service enterprise, vending machine, home sales location, billboard, or other place of business;

2. Maintains a stock of goods;

3. Regularly solicits orders whether or not such orders are accepted within the Township, unless the activity in the Township consists solely of advertising or of solicitation by direct mail;

4. Regularly engages in the delivery of property in the Township other than by common carrier or United States mail; or

5. Regularly engages in any activity in connection with the leasing or servicing of property located within the Township borders.

E. If none of the conditions listed under subsection (D) exist, the vendor is not responsible for the collection of the use tax, but each person storing, using, or consuming tangible personal property purchases outside the Township and brought within the Township is responsible for remitting the use tax.

F. For purposes of collecting and enforcing the tax imposed by this Subchapter, a vendor will be deemed to have submitted to the civil jurisdiction of the Navajo Nation and the Township, if the vendor has done any of the acts listed in subsection (D) above, or if the vendor has intentionally reached into the Township in order to make a sale, or has otherwise acted so as to establish a jurisdictional nexus with the Township.

G. Each vendor shall collect the sales or use tax from the purchaser, but the vendor may not collect as tax an amount, without regard to fractional parts of the one cent, in excess of the tax computed prescribed in this Subchapter.

H. On all motor vehicle sales made by other than a regular licensed dealer, the sales or use tax shall be paid by the purchaser directly to the Township upon every sale of a motor vehicle subject to registration under the laws of the Nation or any state.

1. No resident purchasing a motor vehicle within or without the Township and subject to the civil jurisdiction of the Navajo Nation and the Township shall operate that motor vehicle within the Township without first paying the tax due on the sale.

2. The Commission, by regulation, shall determine and establish the practices and procedures necessary for the implementation of this subsection.

3. If retail taxes were paid on the purchase to any governmental jurisdiction in any state or city, the purchase is not subject to the use tax.

I. Except as provided in subsection (H), the sales or use tax imposed by this Subchapter is due and payable to the Township monthly, based on monthly receipts. Each vendor shall, on or before the last day of the month next succeeding each reporting period, file with the Township a return for the preceding reporting period. The return shall be accompanied by a remittance of the amount of tax required under this Subchapter to be collected or paid for the period covered by the return.

1. The sales tax computed in the return shall in all cases be based upon the total nonexempt sales made during the period, including both cash and charge sales.

2. The use tax computed in the return shall in all cases be based upon the total amount of sales or purchases for storage, use, or other consumption in the Township made during the period, including both by cash and by charge.

J. Credit is allowed for prepaid taxes and for taxes paid on that portion of an account determined to be worthless and actually charged off for income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

K. All sales tax returns shall contain the information and be in a form prescribed by the Township by regulations.

L. The vendor shall give the purchaser a receipt for the use tax collected. This provision may be satisfied by the vendor billing the use tax as a separate item and declaring the name and his or her use tax license number on the invoice for sale. The receipt shall be prima facie evidence that the vendor has collected the use tax and shall relieve the purchaser of the liability for reporting the use tax to the Township as a consumer.

M. The Township, if it deems necessary to ensure compliance with this Subchapter, may require any person, subject to the tax imposed under this Subchapter, to deposit with its security as determined by the Township. The security may be sold by the Commission at public sale if it becomes necessary to do so in order to recover any tax, interest, or penalty due. Notice of such sale may be served upon the person who deposited the securities personally or by mail. If notice is by mail, notice sent to the last known address as it appears on the records of the Township is sufficient for purposes of this requirement. Upon such sale, the surplus, if any, above the amounts due under this Subchapter, shall be returned to the person who deposited the security.

N. If any vendor, during any reporting period, collects as a tax an amount in excess of the lawful amount due, he or she shall remit to the Township the full amount of the any excess tax collected as well as the tax imposed by this Subchapter.

SECTION 8-314 Severability

If any provision of this Subchapter, as amended, or its application to any person or circumstance, is held invalid by a final judgment of a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the Subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this Subchapter are severable.

SECTION 8-315 Effective Date

This Subchapter shall take effect on January 19, 1996. The effective dates of any subsequent amendments shall be stated in the adopting resolution.

SECTION 8-316 Repeals

All laws or parts of laws (or attachments thereto) which are inconsistent with the provisions of this amended Subchapter are hereby repealed, including, without limitation, any law purporting to waive any right of taxation by the Navajo Nation or the Kayenta Township.

KAYENTA TOWNSHIP
BUSINESS SALES TAX REGULATIONS

SECTION 8.301	TITLE
SECTION 8.302	AUTHORITY
SECTION 8.303	RATE OF TAX
SECTION 8.304	RETAIL SALES
SECTION 8.305	CONSTRUCTON CONTRACTORS
SECTION 8.306	HOTEL, MOTEL, BED AND BREAKFAST
SECTION 8.307	PRINTING
SECTION 8.308	COMMON CARRIERS
SECTION 8.309	RENTAL, LEASE OF TANGIBLE PERSONAL PROPERTY
SECTION 8.310	RESTAURANT
SECTION 8.311	GENERAL
SECTION 8.312	AUTHORITY OF TOWN MANAGER TO RULE ON, ABATE OR COMPROMISE LIABILITY ARISING FROM DENIAL OF CLAIMS FOR REFUND OR OBJECTIONS TO AN ASSESSMENT OR OTHER ADVERSE ACTION
SECTION 8.313	EFFECTIVE DATE

KAYENTA TOWNSHIP
BUSINESS SALES TAX REGULATIONS

Section 8.301. Title.

This subchapter shall be known as the Business Sales Tax Regulations ("Regulations").

History

KTCJN-36-04 (April 19, 2004)	The KTC approved the Regulations.
KTCS-73-11 (Sept. 12, 2011)	The KTC approved Amendment No. 1 to delete the tax administration provisions, which were incorporated into the Tax Administration Regulations.
KTCJA-02-13 (Jan. 14, 2013)	The KTC approved Amendment No. 2 to adopt certain technical amendments.

Section 8.302. Authority.

The Kayenta Township Commission promulgates these regulations pursuant to Section 8-313 of the Business Sales Tax Ordinance.

Section 8.303. Rate of Tax.

Effective August 18, 2002, the rate of tax shall be five percent (5%) of gross receipts. The 5% rate shall apply to all gross receipts received for goods sold or service performed after such date.

Section 8.304. Retail Sales.

A. Gross receipts from the sales of tangible personal property to be resold by the purchaser in the ordinary course of business or to be leased out by a person in the business of leasing such personal property are not taxable.

B. Livestock or agricultural production derived directly from a ranch or farm are not taxable. Sales of products by any farmer or other agricultural producer of poultry, eggs, or dairy to consumers are deemed casual sales and are not taxable under the retail classification if such sales have an average monthly sales value of less than $1,000.

C. The exemption of labor costs from the business sales tax in installation services in connection with retail sales, service industries and contract construction and delivery charges is not allowed unless the charge for services in shown separately on the sales invoice and records.

D. Payments received after the conversion from a lease to a purchase are taxable as retail sales.

E. Consignment Sales.

1. The following definitions apply for purposes of this rule:

a. "Consignee" is the party which is in the business of selling tangible personal property belonging to a "consignor."

b. "Consignor" is the party with the legal right to contract the services of the consignee to sell tangible personal property on behalf of the consignor.

2. Gross receipts from consignment sales are subject to tax as retail sales.

3. A consignee shall obtain a sales tax license prior to engaging in the business of making consignment sales.

F. Discounts, Refunds, and Coupon Redemption.

1. Cash discounts allowed the purchaser for timely payment may be deducted from the sale price.

2. Refunds in cash or credit given on returned merchandise are considered to be a reduction of sales.

3. When coupons issued by a manufacturer are redeemed by a retailer the amounts refunded to the purchaser are not permissible as deductions from the selling price of articles sold by the retailer. In such cases, the gross price is taxable.

4. Coupons issued by a retailer and later redeemed by the retailer as a discount on the price of merchandise sold by him are considered a reduction of the selling price. In such cases, only the net selling price is subject to tax.

G. Retail Sales with Trade-ins.

1. When a retailer accepts tangible personal property as a trade-in for part or full payment on the sale of tangible personal property, the dollar amount of the payment represented by the trade-in is deductible from the retailer's gross receipts from that sale.

2. A trade-in deduction shall be limited up to the amount of the retailer's gross receipts on that sale.

3. When the property traded in is subsequently sold at retail, the gross receipts from the transaction are taxable.

H. Delivery Charges in Connection with Retail Sales.

1. A charge by a retailer for delivery fees from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.

2. When the freight cost is incurred any time prior to the time of the retail sale, such cost is part of the gross sale and, therefore, subject to the tax.

I. Artists.

1. Gross receipts from the sale of paintings, drawings, etchings, sculptures, craftwork, other artwork or reproductions of such items to final consumers shall be taxable as a retail sale if the person is making regular sales of such items.

2. Gross receipts from the sale of paints, canvasses, frames, sculpture ingredients, and other items which will become an integral part of the finished product shall not be taxable if sold to a creating artist who is regularly engaged in the business of creating and selling paintings, drawings, etchings, sculptures, craftwork, other artwork, or reproductions of such items. Sales of brushes, easels, tools, and similar items to be used by the creating artist shall be taxable.

3. Gross receipts from the sale of the creating artist of a painting, drawing, etching, sculpture, or a piece of craftwork that is not a reproduction of an original work shall not be taxable if:

   a. The sale is a casual sale; or

   b. The sale is of commissioned artwork by an individual artist. For purposes of this rule, "commissioned artwork" is a custom, one-of-a-kind art creation made by the individual artist pursuant to the particular requirements of a specific purchaser.

J. Gross receipts from sales of the following items are deductible from the tax base:

1. Drugs on a prescription.

2. Any item used in the practice of traditional Navajo medicine, provided the item is used for such purposes.

3. Medical oxygen.

4. Insulin, insulin syringes, and glucose strips whether or not prescribed.

5. Prosthetic appliances prescribed or recommended by a statutorily authorized individual.

6. Durable medical equipment

7. Prescription eyeglasses and contact lenses.

8. Hearing aids.

9. Any other item listed in Section 8-308 of the Business Sales Tax Ordinance.

K. A retailer's gross receipts from the sale of postage stamps are not included in the tax base under retail sales if the stamps are sold for the purpose of transporting mail.

L. Gross receipts from sales of tangible personal property made in the Navajo Nation, interstate or foreign commerce are deductible from the tax base if all of the following apply:

1. The order is received from a location outside of the Township; and

2. The retailer ships or transports tangible personal property through the Township to a location outside of the Township for use outside of the Township.

M. Gross receipts from sales made by florists are taxable. Delivery and relay or transmittal charges, when separately stated. are deductible from the tax base.

N. Gross receipts from sales to non-Indians are subject to the tax unless otherwise exempt.

O. Gross receipts from the sale of tangible personal property to the Navajo Nation, state or their political subdivisions are taxable unless otherwise exempt.

P. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organization are taxable unless otherwise exempt.

Q. Gross rental receipts from home site leases are exempt from sales tax.

R. Tax-exempt foods

1. Normally, all food purchases are subject to the sales tax. Tax exempt foods are generally those items of food intended for home consumption which, if purchased from an eligible grocery business. would be eligible as of January 1, 1979, to be purchased with food coupons issued by the United States Department of Agriculture.

2. Tax-exempt food shall also include any new items of food intended for human consumption which would have been eligible for purchase with food coupons issued by the United States Department of Agriculture if such items would have existed for sale on January 1. 1979.

3. The following are examples of items which the Township will consider as tax exempt food, provided these items are purchased with food coupons issued by the United States Department of Agriculture:

   a. bread and flour products
   b. can vegetable products
   c. candy and confectionary

d. sugar, sugar products and substitutes
e. cereal and cereal products
f. butter, oleomargarine, shortening and cooking oils
g. cocoa and cocoa products
h. coffee and coffee substitutes
i. milk and milk products
j. eggs and egg products
k. tea
l. meat and meat products
m. spices, condiments, extracts and food colorings
n. fish and fish products
o. frozen foods
p. soft drinks and soda (including bottles on which a deposit is required to be paid)
q. fruit and fruit products
r. packaged ice cream products
s. dietary substitutes
t. ice cubes and bottle water including carbonated and mineral water
u. purchase of seed and plants for use in gardens to produce food items for personal consumption

S. The sales tax applies to all gross receipts for professional services performed within the Township. The tax does not apply to work performed outside of the Township. even when it is done for clients within the Township.

Section 8.305. Construction Contractors.

A. Taxpayer bonds for Construction Contractors

1. A surety bond shall include a bond issued by a company authorized to execute and write bonds in the Navajo Nation and Arizona as a surety or composed of securities or cash which are deposited with the Township.

2. The businesses subject to these bonds are grouped in accordance with the standard industry classifications by average business activity. The business classes and bond amounts are as follows:

a. Two thousand dollars ($2,000) or such other amount as required by the Township's Building Official, whichever is higher, for:

i. General contractors of residential buildings other than single family;
ii. Operative builders;
iii. Plumbing, air conditioning, and heating, except electric;
iv. Painting, paper hanging;
v. Decorating;
vi. Electrical work;
vii. Masonry stonework and other stonework;

viii. Plastering. drywall. acoustical and insulation work;
ix. Terrazzo. tile. marble and mosaic work;
x. Carpentry;
xi. Floor laying and other floor work;
xii. Roofing and sheet metal work;
xiii. Concrete work;
xiv. Water well drilling;
xv. Structural steel erection;
xvi. Glass and glazing work;
xvii. Excavating and demolition work;
xviii. Wrecking and demolition work;
xix. Installation and erection of building equipment; and
xx. Special trade contractors.

b. Seven thousand dollars ($7,000) or such other amount as required by the Township's Building Official. whichever is higher, for:

i. General contractors of single family housing; and
ii. Water. sewer. pipeline, communication and power-line construction.

c. Seventeen thousand dollars ($17,000) or such other amount as required by the Township's Building Official, whichever is higher, for:

i. General contractors of industrial buildings and warehouses;
ii. General contractors of nonresidential buildings other than single family; and
iii. Highways and street construction except elevated highways.

d. Twenty-two thousand dollars ($22,000) or such other amount as required by the Township's Building Official, whichever is higher, for heavy construction.

e. One-hundred two thousand dollars ($102,000) or such other amount as required by the Township's Building Official, whichever is higher, for bridges, tunnels and elevated highway construction.

B. The bond shall not expire prior to two years after the business license is issued. Upon lapse or forfeiture of any bond by any licensee, the licensee shall deposit with the Township another bond within five business days of the licensee's receipt of written notification by the Township.

C. All persons engaging in the business of contracting are required to obtain a business license and to file reports on a basis to be determined by the Township whether or not any tax is payable.

D. Construction projects performed for the Navajo Nation. Township. state. cities. counties, federal government, or any subdivision or agencies thereof, are taxable. unless otherwise exempt.

E. A person engaged in the business of leveling, ditching. well drilling. installing pumps in wells. and original land clearing for others is taxable under prime contracting.

F. Installation of equipment which becomes permanently attached in a plant or other structure is taxable as a contracting activity, not retail installation.

Section 8.306. Hotel, Motel, Bed and Breakfast.

A. Gross receipts from providing lodging obtained for a continuous block of time for 30 or more consecutive days shall be subject to the Sales Tax. Gross receipts from providing lodging on a daily basis or for less than 30 days shall not be subject to the Sales Tax but are subject to the Hotel Occupancy Tax.

B. Long term residential rentals from trailers, trailer courts, apartments. townhouses, houses and housing subdivisions operated as a business are subject to the Sales Tax .

C. If a hotel, motel, or bed and breakfast facility is engaged in the business of providing lodging and engages in the business of providing meals, the gross receipts from restaurant, snack and beverage bars are subject to the Sales Tax.

D. Gross receipts from the sale of tangible personal property by hotel. motel, or bed and breakfast facilities such as from magazine stands, gift shops, or in-room food service or snack or beverage bars are subject to the Sales Tax.

Section 8.307. Printing.

A. Gross receipts from the business of printing or other reproduction of books, periodicals, magazines, business or professional stationery, and of any other articles copied or reproduced by printers, publishers, engravers, embossers, or copiers. is taxable.

B. The income from sales made by a job printer of materials on which no printing or other reproduction is done is subject to tax under retail sales.

C. A job printer may not take a deduction for cost of materials used.

D. Photography does not fall within printing but is included under the retail sales as professional services.

Section 8.308. Common Carriers.

A. Gross proceeds of sales or gross income from charges for transporting packages, materials. or freight from one point to another point in the Township, if not separately stated as a delivery charge. is included in the tax base.

B. Gross income from sales by telephone or telegraph corporations, whether the corporations are privately or publicly owned, for all telephone service (including cellular. cable. or satellite telephone service). facsimile or telegraph service provided to residential and commercial consumers within the Township is taxable.

Section 8.309. Rental, Lease of Tangible Personal Property.

A. Gross income derived from the rental of tangible personal property is included in the tax base unless a specific statutory exemption, exclusion, or deduction applies. Examples of tangible personal property include televisions, trucks, lawnmowers, floor polishers, tuxedos. uniforms. furniture. towels, and linens.

B. Gross income from the rental of tangible personal property includes charges for installation. labor. insurance. maintenance, repairs, pick-up, delivery, assembly, set-up. personal property taxes. and penalty fees even if these charges are billed as separate items. unless a specific statutory exemption, exclusion, or deduction applies.

C. The rental location of the equipment leased by a Township lessor to a lessee who takes possession of the property in the Township is taxable.

D. A lessor's gross income from the rental of tangible personal property to a school, church, or other nonprofit organization is taxable unless a specific statutory exemption, exclusion. or deduction applies.

Section 8.310. Restaurant.

A. A restaurant's gross proceeds of sales or gross income from sales of food or drink to an employee of the United States Government, the Navajo Nation Government, the state or its political subdivisions. or any other government agency, or its employees is included in the tax base under the restaurant classification.

B. A sale of meals to a school, church, or charitable institution is exempt under Section 8-308 of the Business Sales Tax Ordinance.

C. A restaurant's gross proceeds of sales of gross income from the operation of amusement devices such as coin operated computer games and juke boxes are included in the tax base.

D. If a restaurant cannot specifically segregate the charges for gratuities or if any portion of the amounts charged for gratuities is not distributed to the employees involved, the total gross receipts from the gratuities are included in the tax base of the restaurant.

Section 8.311. General.

A. "Casual sale" means an occasional transaction of an isolated nature made by a person who is not engaged in the business of selling, within or without the Navajo Nation or the Township, the same type or character of property as that which was sold.

B. The sales tax is imposed directly on the customer engaging in a taxable transaction with a business within the Township. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.

C. The seller may establish the deduction for a sale for resale or a sale for lease by obtaining Form 500, "Sales Tax Exemption Certificate" from the purchaser.

D. The revenues from the business sales tax that is deposited into the General Fund are to be utilized to provide essential governmental services. For purposes of this regulation, the payment of personal expenses and debts, e.g., utility bills, vehicle payments, rent, and medical bills are not considered essential governmental services and, therefore, use of these revenues for such purposes is prohibited.

E. The vendor is responsible for the payment of tax and therefore shall provide sufficient documentation in support of all deductions.

F. The Township has prescribed certificates for establishing entitlement to statutory deductions and exemptions. Reproductions of the blank prescribed original certificate shall be acceptable for use.

1. Form 500 is the "Sales Tax Exemption Certificate" for documenting sales that are exempt from the business sales tax.

2. Form 500 must be filled out completely including a statement as to what the items purchased will be used for. If Form 500 is not collected from the purchaser at the time of the purchase, the vendor will be allowed thirty days from the time such documentation is requested by the Township to obtain a completed, signed Form 500 from their customer. Other forms of documentation may be accepted if they contain the information requested on Form 500 and substantially document an exempt sale.

3. Form 505 is the "Prime Contractor's Certificate" for documenting subcontractor's status on a job within the Township.

4. Form 505 must be completed and signed by the prime contractor who is assuming liability for the tax on said job. Other forms of documentation may be suitable such as contracts or statements signed by the prime contractor.

G. A vendor collecting tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period.

1. If the sales invoice separately states the tax collected, the amount is the minimum amount that must be paid to the Township. If the stated amount is less than the 5.0% tax required, the vendor must pay the difference between the amount collected and the amount due. If the amount stated exceeds the 5.0% tax due, the excess tax must be either refunded to the customer or sent to the Township as "Excess Tax Collected."

2. If the tax is not separately stated or the words "tax included" appears on the sales invoice, the tax must be factored out of the amount of income received from that customer. The sales tax factor for 5.0% is 0.04761905. To calculate the tax on invoices that do not separately state the tax, multiply the total taxable sale by the factor. If the sales tax is not separately stated on the invoice and collected from the customer, the business is liable for the factored tax due.

H. The Use Tax imposes upon the buyer a tax on the business's purchase of tangible personal property from an out-of-state or out-of-town vendor.

1. The tax applies to the use, storage, or consumption of items purchased from out-of-state or out-of-town supplies by a Township business.

2. In cases where the Township business buyer has paid sales tax to an out-of-state or out-of-town seller, the amount paid may be applied against his Township Use Tax liability.

Section 8.312. Authority of Town Manager to Rule on, Abate or Compromise Liability Arising From Denial of Claims for Refund or Objections to an Assessment or Other Adverse Action.

A. Pursuant to Section 8.110 of the Tax Administration Regulations, the Town Manager has the duty and responsibility to rule on a taxpayer's objection to a denial of a claim for refund, an assessment or other adverse action; and pursuant to Section 8-133 of the Tax Administration Ordinance, the Town Manager after consultation with the Commission can abate any part of the assessment or compromise the tax liability arising from such denials, objections or other adverse actions. It is a condition precedent to the exercise of the Town Manager's authority that the taxpayer must:

1. file a written objection with the Township and

2. file with the Township a written request for a conference with the Town Manager.

B. The Town Manager's decision whether or not to grant a stay of payment of taxes pending a decision is not subject to Commission approval nor can such decision be appealed to the Administrative Hearing Officer or the Supreme Court.

C. Payment of less than $1,000.00 on a claim for refund is not subject to approval by the Commission or the Town Manager: such payments must be approved by the Financial Manager and notice shall be given to the Town Manager.

D. Neither the Town Manager nor any Township employee is authorized to waive the application and enforcement of any tax ordinance or regulation, unless specifically authorized by law.

E. Taxpayers petitioning the Township for special rates, favorable rates, or exemptions or deductions shall petition in writing to the Township. In the interest of protecting fair treatment of all taxpayers under Business Sales Tax Ordinance, such variances can only be approved through the following procedure:

1. The variance must be pre-approved by the Town Manager and the Commission; and

2. The variance must be enacted as an amendment to the Business Sales Tax Ordinance pursuant to the procedures for amending Township ordinances; and

3. The variance must be approved pursuant to the amended ordinance.

Section 8.313. Effective Date.

This Subchapter shall take effect on June 14, 2004. The effective date of any amendments thereto shall be stated in the adopting resolution.

CHAPTER 9

KAYENTA TOWNSHIP
LEASING ORDINANCE

SUBCHAPTER 1
BUSINESS SITE LEASING

SECTION 9-101	TITLE
SECTION 9-102	POLICY
SECTION 9-103	AUTHORITY
SECTION 9-104	DEFINITIONS
SECTION 9-105	APPLICABILITY
SECTION 9-106	EFFECTIVE DATE
SECTION 9-107	BUSINESS SITE LEASING REGULATIONS
SECTION 9-108	BUSINESS SITE LEASES
SECTION 9-109	APPROVAL, RECORDING AND DISSEMINATION OF LEASES
SECTION 9-110	SEVERABILITY

BUSINESS SITE LEASING

SECTION 9-101 Title

This chapter shall be cited as the "Kayenta Township: Chapter 9, Business Site Leasing Ordinance."

HISTORY

KTCO-027-98 (Oct. 16, 1998) Adopted the original Lease Ordinance with general provisions and business site lease provisions.
KTCD-046-98 (Dec. 20, 1998) Approved Amendment No. 1 to the Lease Ordinance.
KTCF-002-00 (Feb. 20, 2000)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-102 Policy

It is the policy of the Kayenta Township that its leasing system accomplishes the following goals:

A. To protect the land and resources by regulating the types of land use and limiting the adverse impacts;

B. To protect and enhance the public health and welfare by establishing terms and conditions for land use activities, and by prescribing sanctions for violations of those terms and conditions;

C. To generate revenues in the form of rents and fees; and

D. To encourage development by instituting a streamlined leasing process and providing appropriate incentives and opportunities for individuals and businesses.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-103 Authority

Pursuant to the Navajo Nation Council Resolutions CJA-3-96 (Jan. 19, 1996), CN-76-96 (Nov. 1, 1996), CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003), the Kayenta Township Commission has the general authority and responsibility to govern for the welfare of the Kayenta Township and its residents, including the enactment of such ordinances, rules and regulations as it deems in the best interest of the Township.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-104 Definitions

A. "Asset management system" means a system that is designed for the purposes of leasing, renting, operating and maintaining the leased premises, managing the leased premises and structures affixed to such premises, tracking of inventory and income, and accounting for the rents and fees, property and land related to the leased premises.

B. "Kayenta Township" means the home rule municipality created by the Navajo Nation Council pursuant to Resolutions CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003).

C. "Kayenta Township Commission" means the governing body of the Kayenta Township.

D. "Lessor" means the Kayenta Township, as the authorized agent of the Navajo Nation, the beneficial owner of all lands within the Kayenta Township, for issuing, approving, processing, administering, managing and enforcing business site leases within the Kayenta Township.

E. "Navajo Nation" means the Navajo Nation government.

F. "Regulations" means the Kayenta Township Business Site Leasing Regulations.

F. "Trust assets" means any property held by the United States in trust for the Navajo Nation.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-105 Applicability

A. This ordinance shall apply to all new business site leases, permits, licenses, and associated rights-of way and easements within the Kayenta Township, except for those related to energy transmission and mineral development.

B. This ordinance shall govern all new business site leases on previously withdrawn lands, including but not limited to industrial parks, shopping centers, trading post sites and other commercial leases.

C. This ordinance shall apply to existing business site leases where the current lessee agrees to enter into a novation of the lease, which novation will substitute the Kayenta Township or its wholly owed economic development entity for the Navajo Nation as lessor, but shall not affect the terms and conditions of the Lease.

D. This ordinance shall apply to all existing business site leases that will expire and are proposed to be renewed where the current lessee agrees to enter into a renewed lease with

the Kayenta Township. Such renewal will substitute the Kayenta Township or its wholly owned economic development entity for the Navajo Nation as the lessor.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-106 Effective Date

This ordinance shall take effect upon its enactment by the Kayenta Township Commission, provided, however, that such enactment shall not diminish any valid existing rights established prior thereto, including such rights under pre-existing approved leases, permits, licenses, rights-of-way and easements. HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)

SECTION 9-107 Business Site Leasing Regulations

A. The Kayenta Township shall promulgate the Kayenta Township Business Site Leasing Regulations consistent with the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), as amended, the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, and the *Navajo Nation Business Site Leasing Regulations of 2005*, as amended.

B. Such Regulations shall consider factors that:

1. Protect and preserve the trust assets from loss, damage, unlawful alienation, waste and depletion;

2. Provide for an asset management system that promotes the prudent management of the trust assets;

3. Account for the timely payment, collection, deposit and distribution of income from the trust assets or the reinvestment of income or monies into local economic development activities and projects;

4. Provide a recordkeeping system of accounting and other operational information of leases;

5. Establish standards for the negotiation and approval of leases, subleases, assignments, amendments, encumbrances, renewals and cancellations.

6. Provide for the proper recording of leases;

7. Provide for an adequate environmental review process;

8. Provide for adequate enforcement measures and appeals process;

9. Provide for other provisions that promote modern leasing practices.

HISTORY

KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-108 Business Site Leases

A. A person proposing to lease land shall submit an application for a lease, which shall contain all the necessary information specified by the Kayenta Township Business Site Leasing Regulations and Kayenta Township Business Site Leasing Management Plan.

B. The Kayenta Township staff shall negotiate the terms and conditions of the proposed lease and ensure that the applicant complies with all requirements of the Kayenta Township Business Site Leasing Regulations and Kayenta Township Business Site Leasing Management Plan. Then, the Kayenta Township staff shall prepare the lease agreement and present it for approval by the Kayenta Township Approving Official.

C. The standard lease document form developed by the Navajo Nation Division of Economic Development, Navajo Nation Department of Justice and Kayenta Township shall be used for all business site leases of trust lands within the Kayenta Township. The Kayenta Township may approve business site leases that generally conform to the standard lease document form with such modifications as it deems prudent, desirable or necessary, provided that such modified lease documents do not violate the Kayenta Township Business Site Leasing Regulations or any applicable Navajo Nation or federal law or regulations.

D. Encumbrances of all leaseholds and subleaseholds shall require the consent of the lessor and President of the Navajo Nation, on behalf of the Navajo Nation, unless otherwise specified in the lease.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-109 Approval, Recording and Dissemination of Leases

A. Approval of a business site lease will require the following:

1. Approval of the lease agreement by official documentation of the Approving Official of the Kayenta Township.

2. Signature of the person authorized by the Kayenta Township Approving Official to sign the lease agreement on behalf of the Kayenta Township.

3. Signature of the President of the Navajo Nation, on behalf of the Navajo Nation.

B. The lessor shall record all leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the Lands Title and Records Office of the Southwest Regional Office of the Bureau of Indian Affairs and the Division of Economic Development of the Navajo Nation.

B. Copies of all leases, leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations shall be disseminated to appropriate agencies of the Navajo Nation and the Bureau of Indian Affairs as specified in the Regulations.

HISTORY

KTCO-027-98 (Oct. 16, 1998)
KTCD-046-98 (Dec. 20, 1998)
KTCAU-34-06 (Aug. 14, 2006)
KTCF-03-08 (Feb. 12, 2008)

SECTION 9-110 Severability

The provisions of this Ordinance are severable, and if any provision of this Ordinance, or its application to any person or circumstance, is held invalid by a judgment of the courts of the Navajo Nation, such decision shall not affect the validity of the remaining portions of this Ordinance.

HISTORY

KTCAU-34-06 (Aug. 14, 2006)

KAYENTA TOWNSHIP
BUSINESS SITE LEASING REGULATIONS

SUBCHAPTER 100, GENERAL PROVISIONS

SECTION 9.101	PURPOSES AND AUTHORITY
SECTION 9.102	TITLE
SECTION 9.103	DEFINITIONS
SECTION 9.104	SCOPE
SECTION 9.105	EFFECTIVE DATE
SECTION 9.106	APPROVAL
SECTION 9.107	CHOICE OF LAW
SECTION 9.108	DURATION AND RENEWAL

SUBCHAPTER 200, OBTAINING A BUSINESS SITE LEASE

SECTION 9.201	INFORMATION
SECTION 9.202	SUPPORTING DOCUMENTS
SECTION 9.203	RECORDS
SECTION 9.204	OWNERSHIP OF RECORDS

SUBCHAPTER 300, BUSINESS SITE LEASE REQUIREMENTS

SECTION 9.301	TERMS AND CONDITIONS
SECTION 9.302	LAND DESCRIPTION
SECTION 9.303	APPRAISAL; LOCAL STUDIES
SECTION 9.304	ENVIRONMENTAL REVIEW
SECTION 9.305	FAIR ANNUAL LEASE VALUE
SECTION 9.306	BOND
SECTION 9.307	INSURANCE
SECTION 9.308	IMPROVEMENTS
SECTION 9.309	SUBLEASES, ASSIGNMENTS, AMENDMENTS AND ENCUMBRANCES

SUBCHAPTER 400, BUSINESS SITE LEASE MANAGEMENT

SECTION 9.401	MANAGEMENT
SECTION 9.402	ACCOUNTING
SECTION 9.403	ADMINISTRATIVE FEES

SUBCHAPTER 500. ENFORCEMENT

SECTION 9.501	ENFORCEMENT
SECTION 9.502	DEFAULTS
SECTION 9.503	REMEDIES
SECTION 9.504	PENALTIES
SECTION 9.505	HARMFUL OR THREATENING ACTIVITIES
SECTION 9.506	HOLDOVER
SECTION 9.507	TRESPASS

SUBCHAPTER 600, APPEALS

SECTION 9.601	APPEALS
SECTION 9.602	APPEALS TO THE NAVAJO NATION SUPREME COURT
SECTION 9.603	APPEALS TO THE SECRETARY

SUBCHAPTER 700, ENVIRONMENTAL REVIEW PROCESS

SECTION 9.701	INTRODUCTION
SECTION 9.702	THRESHOLD DETERMINATION
SECTION 9.703	ACTION ON LEASING DECISION SUBJECT TO COMPLETION OF ENVIRONMENTAL REVIEW PROCESS
SECTION 9.704	LESSEE RESPONSIBLE FOR ENVIRONMENTAL COMPLIANCE DETERMINATION
SECTION 9.705	COMPLIANCE DETERMINATIONS
SECTION 9.706	COMPLIANCE DETERMINATIONS IN EARLIER OR CONCURRENT ENVIRONMENTAL REVIEW DOCUMENTS
SECTION 9.707	DETERMINATION THAT LESSEE HAS COMPLETED THE COMPLIANCE DETERMINATION PROCESS
SECTION 9.708	COMPLIANCE DETERMINATION SUMMARY
SECTION 9.709	PUBLIC NOTICE REQUIREMENTS
SECTION 9.710	ENVIRONMENTAL REVIEW RECORD
SECTION 9.711	ENVIRONMENTAL REVIEWER'S AUTHORITY AND DUTIES
SECTION 9.712	ENVIRONMENTAL REVIEWER'S CLOSURE PROCEDURES
SECTION 9.713	ENVIRONMENTAL REVIEWER REQUIRED TO CONSULT WITH APPROPRIATE DEPARTMENTS

SUBCHAPTER 800, AMENDMENTS; SEVERABILITY

SECTION 9.801	AMENDMENTS
SECTON 9.802	SEVERABILITY

KAYENTA TOWNSHIP
BUSINESS SITE LEASING REGULATIONS

Subchapter 100. General Provisions

Section 9.101. Purposes and Authority

A. The purposes of these regulations are:

1. To carry out the authority of the Kayenta Township for issuing business site leases within the Kayenta Township and to set forth the details for the approving, processing, administering, managing and enforcing such leases.

2. To promote self-determination, encourage economic self-sufficiency and increase business and employment within the Kayenta Township.

3. To promote the uniformity of business site leases within the Kayenta Township.

4. To implement the *Navajo Nation Trust Land Leasing Act of 2000,* 25 U.S.C. § 415(e), as amended, and the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, within the Kayenta Township.

5. To implement the Kayenta Township Business Site Leasing Ordinance, Subchapter 2 of Chapter 9, Lease Ordinance, of the Kayenta Township Code of Ordinances.

B. The *Navajo Nation Business Site Lease Leasing Act of 2000* mandates certain provisions including: provisions to protect and preserve the Navajo Nation trust land, provisions for Navajo Nation control of trust land, provisions for asset management, provisions for trust asset accounting, provisions for record keeping and title recording, and provisions for modern leasing practices. Accordingly, these regulations are consistent with the *Navajo Nation Trust Land Leasing Act of 2000,* 25 U.S.C. § 415(e), as amended, as well as the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, as amended, the *Navajo Nation Business Site Leasing Regulations of 2005*, as amended, and the *Navajo Nation Uniform Business Leasing Regulations of 2008*, as amended.

Section 9.102. Title

These regulations shall be referred to the Kayenta Township Business Site Leasing Regulations.

Section 9.103. Definitions

A. For purposes of these regulations:

1. "Approving Entity" means the person or persons established and

authorized by the Kayenta Township Commission to take all necessary and proper action on leases, including but not limited to the approval, amendment, modification, assignment and cancellation of leases, and other related business site leasing documents, on behalf of the Kayenta Township. Such person or persons shall possess qualifications and/or be knowledgeable in real estate, business, finance, planning or related areas and operate within the guidelines established by the Kayenta Township Commission.

2. "Assignment" means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all of the lessee's obligations under a lease.

3. "Best interest of the Kayenta Township" means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Navajo Nation trust lands within the Kayenta Township, and increasing business and employment opportunities within the Kayenta Township.

4. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.

5. "Bond" means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or a third party surety.

6. "Business site lease" means any lease issued upon Navajo Nation trust lands for business purposes within the Kayenta Township.

7. "Change in land use" means the change from residential to non-residential, commercial to industrial, or one use to another that significantly differs from the former use.

8. "Development period" means the period of time beginning from the date the lease is executed to a certain later date determined by the Township, not to exceed 4 years, during which period of time rent is waived or abated.

9. "Environmental Reviewer" means the employee of the Kayenta Township or an independent contractor with the authority set forth in Section 711 hereof.

10. "Environmental Review Process" means the process that considers all of the documents relevant to an environmental review for a Leasing Decision, for which the Environmental Reviewer shall maintain a written record ("Environmental Review Record").

11. "Executing Official" means the Navajo Nation President authorized to take all final necessary and proper action on leases, including the approval, amendment, modification, assignment and cancellation of leases, and other related business site leasing documents, within the Kayenta Township, on behalf of the Navajo Nation.

12. "Equity" means the value of a business or property over and above the

indebtedness against it, and includes all tangible and intangible assets including capital stock, options, franchises, trademarks, patents, copyrights. goodwill, contracts, facilities, infrastructure and equipment.

13. "Fair annual lease value" means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement, including term. rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations: the lessee and lessor each acting prudently and knowledgeably; and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions, whereby:

a. The lessee and lessor are typically motivated;

b. Both parties are well informed or well advised, and acting in what they consider are their best interests;

c. A reasonable time is allowed for exposure in the open market;

d. The rent payment is made in terms of cash in Unites States dollars and is expressed as an amount per time period consistent with the payment schedule of the lease agreement; and

e. The rental amount represents the normal consideration for the property lease unaffected by special fees of concessions granted by anyone associated with the transaction.

14. "Interested party" means the lessee or a person whose interest is adversely affected by the lessor's leasing decision.

15. "Kayenta Township" means the home rule municipality created by the Navajo Nation Council pursuant to Resolutions CJY-42-03 (July 25, 2003) and CAU-47-03 (Aug. 29, 2003).

16. "Kayenta Township Commission" means the governing body of the Kayenta Township.

17. "Lease" means a written agreement or contract between the lessor and a lessee, wherein the lessee is granted the right to possess Navajo Nation trust land for a specific purpose and duration. Pursuant to 5 N.N.C. § 2303(F). a "Lease" also means a business site lease, permit or license granted for land use privileges in Navajo Nation trust land for business purposes. The written agreement transfers the rights to use and occupy land or structures from the owner to another for a specified period of time in return for a specified rent.

18. "Leasing Decision" means any official decision made by the Kayenta Township regarding a lease or sublease.

19. "Lessee" means a person to whom property is leased under a lease and the one who has the right to use or occupy a property under a lease agreement.

20. "Lessor" means the Kayenta Township.

21. "Master Lease" means a controlling lease for a tract of land by which all subsequent subleases are governed.

22. "Mortgage" means a written instrument that creates a lien upon real estate encumbered in a business site lease as security for the payment of a specific debt.

23. "Navajo Nation" means the Navajo Nation Government.

24. "Navajo Nation law" the body of law governing the land and activities occurring within the jurisdiction of the Navajo Nation.

25. "Navajo Nation trust land" means the surface estate of land or any interest therein held by the United States in trust for the Navajo Nation; land held by the Navajo Nation and subject to federal restrictions against alienation or encumbrance; and land held by the United States in trust for a Navajo Nation corporation chartered under Section 17 of the Indian Reorganization Act.

26. "OST" means the Office of the Special Trustee for American Indians within the United States Department of the Interior.

27. "Permit" means a written agreement between the Lessor and the applicant for a permit. also referred to as a permittee, where the permittee is granted a revocable use privilege to use Navajo Nation trust land for a specified purpose and a specified time.

28. "Petition" means the submission, after exhaustion of tribal remedies, of a written request to the Secretary for review of the compliance of these regulations by the Kayenta Township.

29. "Secretary" means the Secretary of the United States Department of the Interior or his or her authorized representative.

30. "Sublease" means a written agreement by which the lessee grants a person a right of possession no greater than that held by the lessee under a lease.

31. "Surety" means one who guarantees the performance of another.

32. "Title Plant" means the Land Title and Records Office of the BIA Southwest Regional Office, where leases, subleases, assignments, amendments, encumbrances, renewals. modifications and cancellations are recorded and where title searches can be conducted.

33. "Trespass" means to occupy or use a business site without authorization from the lessor.

Section 9.104. Scope

A. These regulations govern all existing and future business site leases within the Kayenta Township, approved under authority of 25 U.S.C. § 415, as amended, and the *Navajo Nation Business Site Leasing Regulations of 2005*. as amended, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to effect the terms and conditions of existing leases.

B. Business site leases are mandatory for all businesses operating from a permanent structure or fixed location, which are advertising themselves as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by law. Failure to comply with this section shall be addressed pursuant to Navajo Nation law.

Section 9.105. Effective Date

These regulations shall take effect upon approval by the Kayenta Township Commission and the appropriate entity of the Navajo Nation.

Section 9.106. Approval

The lessor may grant a business site lease or permit approved by the Approving Official and/or Executing Official, so long as the lessee complies with these regulations and the granting of the lease or permit is in the best interest of the Kayenta Township.

Section 9.107. Choice of Law

All disputes over leases shall be resolved under the laws of the Navajo Nation. Nothing in these regulations shall be construed to waive the sovereign immunity of the Kayenta Township, Kayenta Township Commission or the Navajo Nation.

Section 9.108. Duration and Renewal

No lease shall be approved for more than twelve (12) months prior to the commencement of the term of a lease. The term of a lease shall not exceed twenty-five (25) years, except that any such lease may include an option or options to renew, for up to two (2) additional terms, each of which may not exceed twenty-five (25) years. The lessee shall notify the lessor of its intent to renew, at least one (1) year before the lease is due to expire.

Subchapter 200. Obtaining a Business Site Lease

Section 9.201. Information

Information on obtaining a business site lease shall be available at the Kayenta Township office.

Section 9.202. Supporting Documents

All applicants for a lease shall submit the following documents to the Kayenta Township: (1) site survey with a legal description; (2) environmental review, if applicable; (3) organizational documents; (4) financial statements; and (5) other documents as may be required by the lessor.

Section 9.203. Records

A. The lessor shall ensure that all business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations are recorded with the following:

Lands Title and Records Office
Southwest Regional Office
Bureau of Indian Affairs
P. O. Box 26567
Albuquerque, NM 87125-6567

B. The lessor is responsible for disseminating recorded lease documents as follows:

Navajo Nation Division of Economic Development
Navajo Nation Office of the Controller
Navajo Nation Land Department
Navajo Nation Records Management Department
Lessee

C. A copy of all leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations shall also be sent for information purposes only to the Bureau of Indian Affairs, Navajo Regional Office and the Western Navajo Agency.

Section 9.204. Ownership of Records

Records of activities taken pursuant to these regulations are the property of the United States, the Navajo Nation and Kayenta Township. Records compiled, developed or received by the lessor in the course of business with the Secretary are the property of the Navajo Nation and Kayenta Township.

Subchapter 300. Business Site Lease Requirements

Section 9.301. Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in the Kayenta Township Standard Business Site Lease Form, or equivalent document. The standard terms and conditions may only be modified with the approval of the management of the Kayenta Township, provided such modification is consistent with these regulations, the *Kayenta Township Business Site Leasing Ordinance*, as amended, and *Navajo Nation Business Site Leasing Regulations of 2005*, as amended, and the *Navajo Nation Uniform Business Site Leasing Regulations of 2008*, as amended. The lessee is responsible for understanding the terms and conditions of the lease.

Section 9.302. Land Description

All leases shall contain an adequate site survey with a legal description based on metes and bounds, rectangular, or lot and block system.

Section 9.303. Appraisal; Local Studies

A. The fair annual lease value shall be determined by an appraisal equivalent procedure, such as a market study or market analysis, performed by the lessor utilizing the following available data: improvement cost, replacement cost, earning capacity, sale and lease data of comparable sites. A log detailing the methods of appraisal or equivalent procedure and approximate value of trust land shall be attached to the business site lease. If a market study is utilized, it shall be one conducted for the entire Township that includes the proposed leased premises. Such market study shall be updated every five years. If a market analysis is used, it shall be conducted for only the proposed lease premises.

B. Alternatively, the fair annual lease value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of land shall be attached to the business site lease.

C. For the first year these regulations are in effect, the appraisal or equivalent procedure shall be submitted to the OST's Navajo Region, Branch of Appraisal, for a determination as to whether the appraisal meets the requirement of these regulations. If the Branch fails to make a determination within fifteen (15) days of receipt of the appraisal or equivalent procedure, the appraisal or equivalent procedure shall be deemed proper. After the first year, the lessor may obtain technical assistance from OST's Appraisal Office.

Section 9.304. Environmental Review

The lessor shall not approve a lease until the proposed business site lessee has completed the environmental review process pursuant to Subchapter 700, if applicable. Leases issued that are not in compliance with this section shall be null and void.

Section 9.305. Fair Annual Lease Value

A. No lease shall be approved for less than the fair annual lease value as set forth in the appraisal or equivalent procedure, except as follows:

1. If a lessee is in the development period;

2. The lessor is providing an incentive for a business to locate within the Kayenta Township and must provide lease concessions. lease improvement credits or lease abatements to attract such business; or

3. The lessor determines such action is in the best interest of the Kayenta Township.

B. The fair annual lease value of a lease may be structured:

1. On a flat rate;

2. On a percentage of gross receipts; or

3. On a flat rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center or generates over $1 million per year of gross receipts.

C. The lease shall provide for periodic review at least every five (5) years and the lease rate may be adjusted if necessary. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the lease agreement or the contribution value of such improvements.

D. If a lease contains an adjustment provision, it shall specify how adjustments will be made, who will make the adjustments, when the adjustments will be effective, and how disputes over adjustments will be resolved.

E. A lease shall be amended if a lease rate adjustment is necessary.

F. The lessor shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for review and the record of acceptance or non acceptance shall be included in the lease file.

Section 9.306. Bond

A. The lessee shall obtain a satisfactory bond (or bonds) in an amount that reasonably assures performance on the lease. Such bond(s) shall be for the purpose of guaranteeing:

1. The lease payments;

2. The estimated cost of development and improvements; and/or

3. Any additional amount necessary to ensure compliance with the lease.

B. The lessor may waive the bond requirement or reduce the bond amount if such waiver or reduction is in the best interest of the Kayenta Township. The lessor shall maintain written records of all waivers or reductions of the bond.

Section 9.307. Insurance

The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent and authorized to do business in the state where the leased premise is located. The insurance policies shall cover property liability, casualty and business interruption. The amounts shall be sufficient to cover the improvements, personal injury or death, and any loss of the lessee, lessor, Navajo Nation and United States. The insurance shall expressly identify the lessor, Navajo Nation and United States as additional insured parties.

Section 9.308. Improvements

A. Improvements placed on the leased premises shall become the property of the lessor upon termination or expiration of the lease, unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal.

B. A lessee may develop equity value in the improvements and sell its interest in the lease based on such equity value. The lessor has a right of first refusal to purchase such interest.

C. The lease may provide that at expiration, cancellation or termination of the lease, the lessor shall purchase the improvements to the premises at fair market value.

Section 9.309. Subleases, Assignments, Amendments and Encumbrances

A. Subleases, assignments or amendments of any lease and encumbrances of any leasehold interest shall have the written consent of the lessor and lessee, as well as the sureties, if any.

B. The lease may authorize subleases, in whole or in part, without further approval of the lessor or the Executing Official, provided a copy of the sublease is provided to the lessor and the sublease complies with these regulations. This in no way relieves the parties from carrying out their duties under the lease.

C. A Master Lease may authorize subleases, in part, without further approval by the lessor, provided a copy of the sublease is provided to the lessor and the sublease complies with

the terms and conditions of the Master Lease and these regulations. This in no way relieves the parties from carrying out their duties under the lease.

D. The lease may authorize encumbrances of the leasehold interest for the purpose of securing a loan or line of credit to develop and improve the premises or operate the business of the lessee. Approval of the encumbrance by the lessor and the Navajo Nation is required. If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the lease without the approval of the lessee, lessor or the Navajo Nation, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, approval by the lessor and Navajo Nation is required, provided the purchaser agrees in writing to be bound by all the terms and conditions of the lease.

Subchapter 400. Business Site Lease Management

Section 9.401. Management

A. The lessor shall manage business site leases located within the boundaries of the Kayenta Township issued pursuant to these regulations.

B. The lessor shall institute a business site leasing management plan that employs sound real estate management practices and addresses accounting, collection, monitoring, enforcement, relief, remedies, etc.

C. The lessor shall also manage leases executed prior to the effective date of these regulations, but only if the lessee executes a consent agreement in writing.

D. The lessor shall also manage leases executed prior to the creation of the Kayenta Township, but only if the lessee executes a consent agreement in writing.

Section 9.402. Accounting

A. The lessor shall implement an accounting system that generates invoices in advance of due dates, accounts for payments, and dates of when lease rate and other adjustments should be made.

B. The system shall include the following information for each lease: name of the lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.

C. The lessor shall provide an annual accounting of each lease to the Navajo Nation Office of the Controller and the Secretary. The lessor shall also provide a written annual financial report of the status of all leases to the Navajo Nation.

D. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

Section 9.403. Administrative Fees

The lessor may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction involving a lease.

Subchapter 500. Enforcement

Section 9.501. Enforcement

A. The lessor shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies and covenants, consistent with the business site leasing management plans. This includes the power to enter the premise at reasonable times, with or without notice, and assess penalties for late payments and other violations of the lease.

B. The lessor may request the Navajo Nation's Office of the Attorney General to assist in the enforcement of leases and these regulations.

Section 9.502. Defaults

A. If the lessor determines that the lessee is in default, the lessor shall send the lessee a notice of default within a reasonable time after such determination. The notice of default may be provided by personal delivery or certified mail, return receipt requested.

B. Within ten (10) days of the personal delivery or mailing, the lessee shall:

1. Cure the default and notify the lessor in writing that the default has been cured;

2. Dispute the lessor's determination that the lease is in default and explain why the lease should not be canceled; or

3. Request additional time to cure the default.

C. If the lessee wishes to dispute the lessor's determination that the lease is in default, the lessee must do so consistent with the appeal provisions described in Subchapter 600.

Section 9.503. Remedies

A. If the lessee fails to cure the default within the prescribed time period, the lessor may:

1. Cancel the lease pursuant to these regulations;

2. Grant an extension of time to cure the default;

3. Pursue other remedies, including the execution of the bonds or collection of the insurance proceeds;

4. Pursue any combination of remedies listed above; or

5. Pursue any other remedy set forth in the business site lease management plan.

B. If the lessor cancels the lease, the lessor shall send the lessee a cancellation letter within a reasonable period of time. The cancellation letter shall be hand delivered or sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

1. Explain the reason(s) for cancellation;

2. Notify the lessee of any unpaid amounts, interest charges, or late payment penalties due under the lease;

3. Notify the lessee of its rights to appeal; and

4. Order the lessee to vacate the leased premises within thirty (30) days of the personal delivery or mailing date of the cancellation letter, if an appeal is not filed by such time.

C. A cancellation shall become effective thirty one (31) days after personal delivery or mailing date of the cancellation letter. The filing of an appeal shall not change the effective date of a cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

D. If the lessor decides to grant an extension of time to cure the default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable period of time. The lessee shall notify the lessor in writing that the default has been cured on or before the expiration of the extension of time.

Section 9.504. Penalties

The lease shall specify the rate of interest to be charged if the lessee fails to make payments in a timely manner. The lease shall identify any additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from the lessor, and the failure to pay such amounts shall be treated as a breach of the lease.

Section 9.505. Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the lessor or the Navajo Nation may take

appropriate emergency action, including, but not limited, to judicial relief.

Section 9.506. Holdover

If the lessee remains in possession after the cancellation or expiration of a lease, the lessor shall treat such occupation as a trespass. The lessor shall take action to recover possession and pursue additional remedies. Filing of any action shall be pursuant to Navajo Nation laws, or the lessor may request the Navajo Nation and/or Bureau of Indian Affairs for resolution under Navajo Nation and/or federal laws; such request shall be in writing by certified mail, return receipt requested.

Section 9.507. Trespass

If a person occupies or uses the premises or a business site without the lessor's approval, the lessor may pursue appropriate remedies, including, but not limited to, the filing of a trespass action to regain possession under Navajo Nation law.

Subchapter 600. Appeals

Section 9.601. Appeals

A. The interested party may appeal the determination of the lessor within ten (10) days of the determination. Appeals may be filed with the Navajo Nation's Office of Hearings and Appeals ("OHA") or other hearing body as set forth in the business site lease management plans. Such appeals shall be effectuated by filing an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

B. An appeal bond shall be posted to protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bond requirements shall not be subject to a separate appeal, but may be contested during the cancellation appeal.

C. The OHA or other hearing body shall review whether the determination by lessor was arbitrary, capricious or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law. The OHA or other hearing body shall issue its written decision within thirty (30) days of filing of the appeal or hearing the appeal, whichever is later.

Section 9.602. Appeals to the Navajo Nation Supreme Court

Decisions of the OHA or other hearing body may be appealed to the Navajo Nation Supreme Court. Review shall be limited to issues of law and the record. *De novo* review is not allowed.

Section 9.603. Appeals to the Secretary

If an interested party is adversely affected by decision of the lessor in violation of these regulations, the interested party may, after exhaustion of tribal remedies, appeal the decision to the Secretary.

Subchapter 700. Environmental Review Process

Section 9.701. Introduction

The Kayenta Township has conducted an Environmental Assessment on April 1, 1999, for which the BIA determined there was "A Finding of No Significant Impact" on July 21, 1999, and Archeological Clearances on July 17, 1987, September 8, 1987 and October 20, 1987, for all lands located within the boundaries of the Kayenta Township. The Environmental Reviewer shall consider these documents in determining whether a Leasing Decision would be subject to the Environmental Review Process of this Subchapter.

Section 9.702. Threshold Determination

A. Lessees Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Navajo Nation and Township, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of Section 710.

B. Lessees Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or cultural resources of the Navajo Nation and Township, the lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

Section 9.703. Action on Leasing Decision Subject to Completion of Environmental Review Process

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process ("ER Process"), the Township should not consider the Leasing Decision until the Environmental Reviewer closes the ER Process in accordance with Section 712.

Section 9.704. Lessee Responsible for Environmental Compliance Determination

A. The lessee, as the entity that will occupy and operate a business on the leased land, is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, the lessee must

provide the Environmental Reviewer a determination of the Leasing Decision's compliance with respect to each of the environmental laws listed below ("Compliance Determination"):

1. National Historic Preservation Act
2. Floodplain Management
3. Wetlands Protection
4. Endangered Species Act
5. Air Quality
6. Sole Source Aquifer
7. Abandoned Mine Lands
8. Navajo Nation's Solid Waste Act
9. Farmland Protection Policy Act
10. Noise Abatement and Control
11. Toxic or Hazardous Substances and Radioactive Materials

B. Lessee's responsibility to comply with the above laws is in addition to and separate from its obligations under this Subchapter, and lessee's compliance obligations under such laws are not extinguished upon complying with the ER Process.

C. Lessee's obligation to provide a Compliance Determination is not complete until the Environmental Reviewer, in accordance with Section 707, has determined that the lessee has completed the Compliance Determination process.

Section 9.705. Compliance Determinations

A. The lessee may request a Compliance Determination from the appropriate Navajo Nation and Kayenta Township departments ("Departments") in accordance with Section 713, and for providing such Departments with the information that may be required to make the Compliance Determination.

B. The Compliance Determination must clearly describe the Leasing Decision under consideration, and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the lessee requests a Compliance Determination.

C. The Compliance Determination must also include a finding by the relevant Department as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

D. A Department's completion of the Compliance Determination will be timely if the Environmental Reviewer receives the Compliance Determination within twenty (20) working days after the latter of the following two events: 1) the Department's receipt of lessee's request for a Compliance Determination or 2) the Department's receipt of information required to complete the Compliance Determination.

E. If the Environmental Reviewer does not receive a completed Compliance Determination in a timely manner from a Department, the Environmental Reviewer may conclude the ER Process without that Department's determination, provided the Environmental Reviewer documents the following conditions:

1. The Environmental Reviewer has made reasonable efforts to obtain the Compliance Determination from the appropriate Department; and

2. The delay is not the fault of the lessee.

Section 9.706. Compliance Determinations in Earlier or Concurrent Environmental Review Documents

A. If the Leasing Decision pertains to an existing lease that has undergone an previous environmental review pursuant to the Township's Business Site Leasing Ordinance or Regulations or the National Environmental Policy Act ("NEPA"), the lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination in Section 707 that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.

B. As early in the ER Process as possible, the Environmental Reviewer should review the earlier environmental review documents and assess whether the Compliance Determination in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not addressed or evaluated by the Compliance Document, the lessee must obtain a compliance update or amendment from the Department that has regulatory responsibility for the resource that was not adequately evaluated.

C. In the event a federal agency requires the lessee to conduct an environmental review under NEPA in connection with a federal decision that is related to the Leasing Decision, the Environmental Reviewer may use those NEPA documents, provided the documents meet the requirements of this Subchapter.

Section 9.707. Determination That Lessee Has Completed the Compliance Determination Process

A. Before the Environmental Reviewer may close the ER Process, he must affirmatively find the following:

1. The lessee has fully complied with the requirements of Sections 704 and 705;

2. The lessee has submitted all Compliance Determinations required by this Subchapter; and

3. The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.

B. Upon making these findings, the Environmental Reviewer will place in the Environmental Review Record ("ER Record") a statement to the effect that lessee has completed the Compliance Determination process.

Section 9.708. Compliance Determination Summary

A. After the Environmental Reviewer certifies that the lessee has completed the Compliance Determination process, the Environmental Reviewer will prepare a summary of the compliance findings. The summary will contain the following information:

1. The date of the Compliance Determination and the identification of the source of the Compliance Determination, if contained in an earlier environmental review;

2. A summary of each Department's compliance determination for each applicable law, including conditions of compliance, if any: and

3. A copy of the Compliance Determination.

B. The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the ER Record.

Section 9.709. Public Notice Requirements

A. The Environmental Reviewer may, if necessary, publish in a general circulation newspaper a notice of the Township's intent to certify that a lessee has completed the ER Process of the Township's business site leasing program.

B. The public notice must provide for a comment period and state that public comments timely received will be considered before the Environmental Reviewer closes the ER Process. The Notice must also provide information about the ER Record and inform the public how the record may be reviewed.

Section 9.710. Environmental Review Record

A. An ER Record must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the Environmental Reviewer finds to be exempt pursuant to Section 702(a). The ER Record must be maintained in a written format and available for public review.

B. The ER Record must contain all documents relevant to the ER Process, including but not limited to, the following:

1. Determinations (in writing) made by the Environmental Reviewer pursuant to this Subchapter;

2. Correspondence with lessee and government agencies;

3. Compliance Determinations including source documents and supporting documents;

4. The Compliance Determination Summary;

5. Public notices, if any; and

6. Public comments, if any.

Section 9.711. Environmental Reviewer's Authorities and Duties

A. The Environmental Reviewer will maintain an ER Record in which all documents relevant to the ER Process for a particular Leasing Decision.

B. The Environmental Reviewer has the authority to carry out all the acts that are committed to their discretion in this Subpart.

C. The Environmental Reviewer may act as lessee's agent for the purposes of assisting the lessee to complete the requirements of this Subchapter.

D. The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The Environmental Reviewer is required to consult with the relevant Departments in the development and implementation of any such procedures.

Section 9.712. Environmental Reviewer's Closure Procedures

A. Upon determining the following, the Environmental Reviewer will conclude the ER Process, whereupon the Environmental Reviewer will transfer the ER Record to the Approving Entity:

1. The ER Record contains all documents required by Section 710;

2. The public comment period has passed, if applicable;

3. The lessee has complied with all requirements of this Subchapter.

Section 9.713. Environmental Reviewer Required to Consult with Appropriate Departments

Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant Navajo Nation Departments, and determine which Department will be responsible for making the compliance finding referenced in Section 705 for each of the environmental laws referenced in Section 704.

Subchapter 800. Amendments; Severability

Section 9.801. Amendments

The management of the Kayenta Township may amend these regulations, provided the amendments are consistent with the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), the *Navajo Nation Business Site Lease Leasing Act of 2000*, 5 N.N.C. §§ 2301-2305, and *Navajo Nation Business Site Leasing Regulations of 2005* and *Kayenta Township Business Site Leasing Ordinance*.

Section 9.802. Severability

If a court of competent jurisdiction determines that a portion of these regulations is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

Original: August 14, 2006 (Resolution KTCAU-34-06)
Amended: July 9, 2007 (Resolution KTCJY-26-07)
Amended: Feb. 12, 2008 (Resolution KTCF-03-08)
Amended: July 7, 2008 (Administrative Amendments)

KAYENTA TOWNSHIP
EST. 1986

CHAPTER 12

KAYENTA TOWNSHIP
CIVIL PUBLIC TRESPASS ORDINANCE

SECTION 12-101	TITLE
SECTION 12-102	FINDINGS AND PURPOSE
SECTION 12-103	DEFINITIONS
SECTION 12-104	APPLICABILITY
SECTION 12-105	REGULATIONS
SECTION 12-106	CONSTRUCTION
SECTION 12-107	SEVERABILITY
SECTION 12-108	CONDITION OF CONSENTS, GRANTS AND AGREEMENTS
SECTION 12-109	PROHIBITION ON POSSESSION OR USE OF LANDS OF THE TOWNSHIP WITHOUT PERMISSION
SECTION 12-110	UNLAWFUL ACTS
SECTION 12-111	CIVIL TRESPASS ASSESSMENTS
SECTION 12-112	INFORMATION AND INVESTIGATION
SECTION 12-113	ENFORCEMENT
SECTION 12-114	NOTICE OF TRESPASS AND ORDER TO COMPLY
SECTION 12-115	CIVIL TRESPASS ASSESSMENT
SECTION 12-116	PAYMENT OF ASSESSMENT
SECTION 12-117	NOTICE TO COMMISSION
SECTION 12-118	APPEALS
SECTION 12-119	STAY UPON APPEAL
SECTION 12-120	HEARING AND DECISION
SECTION 12-121	ENFORCEMENT OF VALID LEASES, EASEMENTS OR RIGHTS-OF-WAY, OPERATING AGREEMENTS OR PERMITS
SECTION 12-122	JUDICIAL ENFORCEMENT
SECTION 12-123	RESERVATION OF RIGHTS
SECTION 12-124	EFFECTIVE DATE; PUBLICATION

CIVIL PUBLIC TRESPASS ORDINANCE

SECTION 12-101 Title

This Chapter shall be cited as the Kayenta Township Civil Public Trespass Ordinance (for purposes of this Ordinance, the "Ordinance").

History

KTCMY-18-12 (May 14, 2012) adopted the initial ordinance.
KTCJA-05-13 (Jan. 14, 2013) amended the ordinance to define the Navajo Nation and make certain technical corrections.

SECTION 12-102 Findings and Purpose

A. The Kayenta Township Commission finds:

1. The Kayenta Township ("Township") comprises an area of 3,606.43 acres, more or less, originally withdrawn by the Navajo Nation Council for the Township by Resolutions nos. CN-86-85 (Nov. 5, 1986) and ACN-181-86 (Nov. 13, 1986).

2. As provided by successive enactments of the Navajo Nation Council, the Township is governed by the Kayenta Township Commission as a "Home-Rule municipality" with "jurisdiction over all that area authorized and designated by the Navajo Nation Council in November 1985," 2 N.N.C. § 4083 (A), (B) (2005), and with "the duty, authority, and responsibility to perform all functions necessary for local self-government, consistent with all generally applicable laws and regulations of the federal government and the Navajo Nation," 2 N.N.C. § 4084 (2005). Such Township authority "shall prevail over all other authority" if exercised in conformity with generally applicable federal and Navajo laws. 2 N.N.C. § 4083(C) (2005).

3. Such home-rule status empowers the Township to legislate and act to prohibit or to remedy unauthorized uses of public land within the Township, and, in the special context of Trespasses by business owners, the Navajo Nation Attorney General has opined that, pursuant to the approval of the Township's business site leasing Management Plan and Administrative Plan by the Economic Development Committee of the Navajo Nation Council, "[t]o the extent that the Navajo Nation may have had claims against third parties relating to business site leasing and related activities," the Navajo Nation has "effectively assigned such claims to the Kayenta Township." Memorandum from Louis Denetsosie, Attorney General, to President Joe Shirley, "Current Authority of Kayenta Township Commission to Approve Business Site Leases and Clarification of April 26, 2006 Attorney General Opinion" (Oct. 18, 2010) at 3.

4. Unauthorized possession of, use of, dumping on, entry on, or holding over on the public lands of the Township cause significant harm to the Township, its residents and visitors, and its environment, and threaten to erode confidence in the rule of law within the Township.

5. The Township should enact an ordinance to prohibit or remedy promptly unauthorized possession of, use of, dumping on, entry on, or holding over on such lands, and should authorize its officials to take reasonable actions to enforce such ordinance through the Township's police powers and otherwise.

B. The purposes of this Ordinance are:

1. To prohibit Trespasses on certain lands within the Kayenta Township.

2. To speedily remedy Trespasses that exist or may arise on public lands of the Township using the police powers of the Township, and provide for the imposition of civil monetary assessments and the enforcement of the same.

3. To provide for administrative and judicial review of such assessments.

4. To recompense the Township for lost revenues, interest, costs, attorney fees, costs of administration and other tangible and intangible costs and damages, if a Person or entity is determined to have been or to be trespassing on certain lands within the Kayenta Township.

5. To ensure that casual, peaceable, non-commercial, and otherwise lawful uses of the public lands of Township are not unduly regulated or inhibited.

6. To define administrative responsibility within the Township government for addressing Trespass situations on certain lands within the Kayenta Township.

7. To preserve the ability of the Navajo Nation and the United States as the trustee of the Navajo Nation to address such Trespass situations.

8. To preserve the exclusive authority of the Navajo Nation government over all minerals and water rights, and over all easements granted by or with the consent of the Navajo Nation government.

SECTION 12-103 Definitions

For purposes of this Ordinance,

A. "Commission" or "Kayenta Township Commission" means the entity recognized under 2 N.N.C. § 4083 (2005) as the governing body of the Kayenta Township.

B. "Easement" and "Right-of-Way" means any valid, unexpired and otherwise non-terminated, and duly authorized grant of, or agreement relating to, an easement or right-of-way in, over, through or to Lands of the Township, including all such interests in land held in accordance with the provisions of 25 U.S.C. §§ 311-328 and regulations at 25 C.F.R. Part 169; Title 5 of the Energy Policy Act of 2005, 25 U.S.C. § 3501 et seq., as amended; any other federal law authorizing easements or rights-of-way in Indian lands;

any amendments to such laws or regulations; and any future federal or Navajo Nation legislation permitting the grant of easements or rights-of-way in, over, under, through or to such Lands.

C. "Lands" or "Lands of the Township" or "Lands within the Township" means any land or any interest in land owned or held by the Navajo Nation or held in trust for the Navajo Nation by the United States within the boundaries of the Township, including without limitation surface interests, subsurface interest, mineral interests, surface or subsurface water appurtenant to, and air space above such land.

D. "Lease" means any valid, unexpired and otherwise non-terminated, and duly authorized lease or lease agreement conveying a leasehold interest in or to, and authorizing the possession or use of, Lands within the Township, including all permits and leases issued in accordance with the provisions of the Navajo and Hopi Rehabilitation Act of 1950, 25 U.S.C. §§ 631-638; the Indian Long-Term Leasing Act of 1955, 25 U.S.C. §§ 415(a)-(d); the Navajo Nation Trust Land Leasing Act of 2000, 25 U.S.C. § 415(e); the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396g; the Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108; Title 5 of the Energy Policy Act of 2005, 25 U.S.C. § 3501 et seq., as amended, and regulations promulgated under federal leasing laws including without limitation regulations at 25 C.F.R. parts 162, 166, 167, 211, 212, 221, and 225; and including all permits and leases issued by the Navajo Nation or the Kayenta Township in accordance with Navajo Nation regulations implementing the Navajo Nation Trust Land Leasing Act of 2005; and any amendments to such laws or regulations; and any future federal or Navajo Nation legislation authorizing the leasing of Lands within the Township.

E. "Manager" means the Town Manager of the Kayenta Township or his or her duly authorized delegate.

F. "Navajo Nation" means the Navajo Nation Council, the President, the Vice-President, and the Executive, Judicial and Legislative Branches of the Navajo Nation central government.

G. "Notice" means the Notice of Trespass and Order to Comply as described in Section 12-114 of this Ordinance.

H. "Ordinance" means this "Kayenta Township Civil Public Trespass Ordinance."

I. "Operating Agreement" and "Permit" means any document or written agreement granting, authorizing, or relating to any duly authorized usufruct or permissive use of Lands within the Township, including without limitation sand and gravel, borrow materials, surveying, and drilling or other exploration permits.

J. "Person" means any individual, group of individuals, corporation, partnership, association, company, or other legal entity, but does not include the Navajo Nation, the United States, or any State.

K. "Township" means:

1. When referring to the Kayenta Township as a body politic, the same meaning as set forth and established in 2 N.N.C. § 4081 (2005).

2. When referring to governmental territorial jurisdiction, all lands described in 2 N.N.C. § 4083(B) (2005) as having been designated by the Navajo Nation Council as the area over which the Commission has jurisdiction.

L. "Trespass" means the unauthorized interest in, possession of, claim to, holding over upon, entry upon, the accidental spilling or intentional dumping or disposal of any trash or waste or petroleum products or other hazardous or other materials on, or other use of Lands within the Township.

SECTION 12-104 Applicability

A. Except as otherwise provided in Subsection (B) of this Section 12-104, this Ordinance shall apply to all Lands within the Township and to all Persons holding or claiming an interest in, possessing, holding over upon, entering upon, burdening, or otherwise using such Lands.

B. This Ordinance shall not apply to casual, peaceable, non-commercial, and otherwise lawful uses of such Lands.

SECTION 12-105 Regulations

A. The Manager, subject to the approval of the Commission, may in his or her discretion promulgate rules and regulations from time to time as may be deemed necessary or desirable to carry out the provisions of this Ordinance, which may include without limitation:

1. Regulations governing administration of this Ordinance by the Manager;

2. Regulations governing the determination of civil Trespass assessments under this Ordinance;

3. Rules and procedures governing appeals provided for under and not inconsistent with this Ordinance.

B. Any proposed rules and regulations shall be published for public review and comment at least thirty (30) days prior to their adoption by the Commission.

C. The effectiveness and enforceability of this Ordinance shall not be dependent on the adoption of regulations under Subsections (A) and (B) of this Section.

SECTION 12-106 Construction

A. The provisions of this Ordinance shall be liberally construed to fulfill the purposes of this Ordinance and consistent with its findings stated above, and so as not to conflict with any applicable Navajo Nation or federal laws.

B. Nothing in this Ordinance shall be construed to diminish, limit, or otherwise adversely affect any right or remedy otherwise available to the Navajo Nation or the Township under other applicable law.

C. This Ordinance does not apply to trespasses on private property, and the rights of owners of such private property shall not be affected or diminished in any way by the provisions of this Ordinance.

D. Nothing in this Ordinance shall be construed to affect the application to any Person of otherwise applicable Kayenta Township ordinances, rules or regulations, or of otherwise applicable laws of the Navajo Nation or the United States, nor to prohibit the Navajo Nation or the Township from enforcing criminal laws against members of the Navajo Nation or nonmember Indians, including without limitation laws concerning intentional and knowing Trespasses on lands or property of another, criminal entry, Trespass with force or violence, or burglary under 17 N.N.C. §§ 350-354 (2005).

E. Nothing in this Ordinance shall be construed as a waiver of the sovereign immunity of the Township or the Commission. *See* 1 N.N.C. § 552(O) (2005).

SECTION 12-107 Severability

If any provision of this Ordinance, or its application to any Person or class of Persons, or to any lands or in a particular circumstance, is held invalid or unlawful for any reason by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

SECTION 12-108 Condition of Consents, Grants and Agreements

A. As matters of both contract and of applicable Kayenta Township and Navajo Nation law, acknowledgment and acceptance of the provisions and applicability of this Ordinance shall be a term and condition of the consent or grant by the Township on its own behalf or on behalf of the Navajo Nation to each and every Lease, Easement or Right-of-Way, Operating Agreement, Permit, or agreement relating thereto, made or entered into from and after the enactment of this Ordinance.

B. Subsection (A) of this Section is not intended to, nor shall it be construed to, diminish, limit, or otherwise adversely affect the application of this Ordinance or any other laws or ordinances enacted by the Township pursuant to its delegated authority or its authority as

a home-rule municipality or its police powers or otherwise to any Person or lands or to any existing Lease, Easement or Right-of-Way. Operating Agreement, Permit, or agreement relating thereto.

C. By accepting the rights and privileges of entering and using Lands within the Township under any Lease, Easement or Right-of-Way, Operating Agreement or Permit, the lessee, grantee, or permittee, as the case may be, shall have consented and shall be deemed to have consented to be governed by this Ordinance. and to the full legislative and regulatory jurisdiction of the Township and to the authority of the Navajo Nation courts including any duly established Kayenta municipal court. as may be necessary or convenient for the full application and enforcement of this Ordinance in accordance with its provisions. However, this paragraph shall not apply to the United States or any State or political subdivision thereof, to the extent such application is inconsistent with applicable federal or State law.

D. Nothing in this Section is intended, nor shall it be construed. to diminish any prior existing contract or property right of any Person or entity.

SECTION 12-109 Prohibition on Possession or Use of Lands of the Township Without Permission

A. Except as otherwise provided in Subsection (B) of this Section. no Person shall have an interest in or to, or possess, enter upon, burden, or use Lands of the Township except pursuant to and in strict compliance with the terms and conditions of a valid Lease, Easement, Right-of-Way, Operating Agreement or Permit. duly issued, approved, or consented to by the Township or the Navajo Nation, as appropriate, or by the United States with the express, valid and contemporaneous consent of the Township or the Navajo Nation, as appropriate.

B. Notwithstanding the provisions of Subsection (A) of this Section, it shall be lawful and permissible for an enrolled member of the Navajo Nation to possess and use land under a validly issued homesite lease or grazing permit which has expired but where a timely and sufficient application for renewal thereof has been made in good faith, is being diligently pursued, and remains pending.

C. Any Person found entering, using, possessing, holding over on, claiming an interest in, or otherwise burdening Lands of the Township without lawful authority shall have consented, and shall be deemed to have consented, by its presence and use of such lands within such jurisdiction, to the full legislative, judicial (including subject matter, personal and *in rem* jurisdiction), regulatory, and administrative jurisdiction of the Kayenta Township and of the Navajo Nation and its courts (including any duly established Kayenta municipal court) as may be necessary or convenient for the full application and enforcement of this Ordinance in accordance with its provisions.

SECTION 12-110 Unlawful Acts

It shall be unlawful to possess, hold over upon, enter upon, or otherwise use Lands of the Township in violation of any provision of Section 12-109 of this Ordinance. Each day that a Person shall so violate any provision of such Section 12-109 shall constitute a separate violation. Each violation with respect to a separate parcel of land shall constitute a separate violation. A parcel shall be considered separate for purposes of this Section where rights to or interests in it are created by a separate instrument, is physically noncontiguous, or is used, in whole or in part, for additional, other, or distinct purposes. The Manager may further define "separate parcel" in regulations adopted in accordance with Section 12-105 of this Ordinance.

SECTION 12-111 Civil Trespass Assessments

A. Any Person who commits any unlawful act under Section 12-110 of this Ordinance shall be subject to a civil assessment not to exceed twenty-five thousand dollars ($25,000) for each violation.

B. In determining the amount of such civil assessment, the Manager, hearing officer, or court, as the case may be, shall consider the seriousness of the violation or violations, the economic or other benefits to the trespasser resulting from the violation, any opportunity costs to the Township, any actual damages to Lands of the Township attributable to the Trespass, whether the trespasser had actual or constructive notice of the Trespass, any history of other violations by the trespasser, any costs to the Township and/or the Navajo Nation attributable to the trespasser's attempts to avoid its responsibilities to the Township and/or the Navajo Nation including without limitation costs of enforcement and attorney fees for any and all related proceedings, any relevant contractual provisions, any good-faith efforts to comply with applicable requirements, and such other factors as justice may require. In no event shall the amount of the assessment be less than the costs of enforcement, the opportunity costs to the Township, the damage to Lands of the Township attributable to the Trespass, and any other direct, consequential or special harm suffered by the Township attributable to the Trespass, unless extraordinary circumstances require otherwise.

SECTION 12-112 Information and Investigation

A. Any Person may provide information to the Manager in writing concerning facts which indicate a Trespass upon Lands of the Township.

B. Any employee or official of the Township or the Navajo Nation with knowledge of facts which indicate a Trespass upon Lands of the Township shall promptly report such information to the Manager in writing.

C. Upon receipt of information indicating a Trespass upon Lands of the Township, the Manager shall undertake such investigation and consult with such other officials of the Township and/or the Navajo Nation as may be necessary or desirable to determine whether a Trespass has occurred and how to proceed if a Trespass is found.

SECTION 12-113 Enforcement

Whenever on the basis of information available to him or her the Manager finds that any Person has violated any provision of Sections 12-109 or 12-110 of this Ordinance on Lands of the Township, the Manager shall notify the legal counsel of the Township and/or the Navajo Nation, as deemed appropriate, and, after such consultation with such legal counsel as the Manager deems appropriate, may take any of the following actions or combination of actions:

A. Issue a Notice of Trespass and Order to Comply in accordance with Section 12-114 of this Ordinance;

B. Issue a Civil Trespass Assessment in accordance with Section 12-115 of this Ordinance;

C. Request the President of the Navajo Nation to initiate exclusion proceedings pursuant to 17 N.N.C. §§ 1901 and 1902;

D. Enforce any applicable Lease, Easement or Right-of-Way, Operating Agreement or Permit in accordance with Section 12-121 of this Ordinance and/or any other ordinances or laws of the Township;

E. Request assistance from the Secretary or other appropriate agency of the United States to address the Trespass and to assist in the enforcement of this Ordinance and of any other applicable Township, Navajo Nation, or federal laws;

F. If any property or equipment of the trespasser has reverted to or is otherwise owned by the Kayenta Township on its own behalf or on behalf or as assignee of the Navajo Nation under the provisions of any applicable law or agreement, determine, after consultation with the legal counsel for the Township, if such property or equipment should be retained by the Township, sold or otherwise conveyed by the Township, or leased or otherwise conveyed to a Person able and willing to operate or use such property or equipment in conformity with applicable Township, Navajo Nation, and federal laws and on such terms and conditions as the Manager deems appropriate, subject to any required approvals of the Commission or any department, agency or official thereof; and/or

G. Take any other reasonable and necessary steps to address and remedy the Trespass in conformity with this Ordinance and any other applicable Township, Navajo Nation, or federal laws.

SECTION 12-114 Notice of Trespass and Order to Comply

A. A Notice of Trespass and Order to Comply ("Notice") shall be in writing, shall identify, if reasonably identifiable, the Person who is trespassing and the location and date of each known Trespass, shall include a short statement of facts indicating the nature and circumstances of the Trespass, and shall include a copy of this Ordinance as it may be amended from time to time.

B. The Notice shall specify the action needed to be taken by the trespasser to remedy the Trespass. Such action may include without limitation:

1. Removal of Persons or property from the premises;

2. Compliance with the terms, conditions, covenants or restrictions of any applicable Lease, Easement of Right-of-Way, Operating Agreement or Permit or any agreement related thereto; and/or

3. Such other action as may be necessary to cure a violation.

C. The Notice shall specify a reasonable period of time within which to comply.

D. The Notice shall not require any action or specify any time period inconsistent with any provision of any applicable Township, Navajo Nation, or federal laws or any term of any applicable Lease, Easement or Right-of-Way, Operating Agreement or Permit or any agreement related thereto.

E. The Notice shall advise the Person identified therein of the rights of appeal available under Section 12-118 of this Ordinance.

F. The Notice shall be served upon the Person identified therein in a manner reasonably calculated to provide actual notice of the matter to such Person, including without limitation personal delivery, service by certified mail, return receipt requested, service to such Person at the address given in any relevant agreement, or any manner of service authorized under Rule 4 of the Navajo Rules of Civil Procedure or Rule 4 of the Federal Rules of Civil Procedure (including without limitation publication), or as otherwise specified in any agreement related to any applicable Lease, Easement or Right-of-Way, Operating Agreement or Permit, or any combination of these means.

G. Nothing in this Section shall prohibit the imposition of civil Trespass assessments for Trespasses occurring prior to service of a Notice or prior to the completion of any compliance period provided by a Notice or prior to the completion of any administrative and/or judicial proceedings related to such assessments.

SECTION 12-115 Civil Trespass Assessment

A. The Manager may serve a Civil Trespass Assessment ("Assessment") in the manner specified in Section 12-114(F), either with or without a Notice.

B. The Assessment shall be in writing, shall identify, if reasonably identifiable, the Person who is trespassing and the location and date of each known Trespass, and shall include a short statement of facts indicating the nature and circumstances of the Trespass or Trespasses.

C. The Assessment shall state:

1. the dollar amount of the Assessment in accordance with Section 12-111 of this Ordinance; and

2. the time period for which each assessment is made.

D. Each Assessment shall reference the provisions of this Ordinance or of any regulations adopted pursuant to Section 12-105 of this Ordinance which govern the calculation of the assessment amount, shall include a short description of the method by which such amount was determined, and shall include a copy of this Ordinance, as it may be amended from time to time.

E. The Assessment shall specify the date by which payment is due to the Township under Section 12-116 of this Ordinance.

F. The Assessment shall advise the Person identified therein of the rights of appeal available under Section 12-118 of this Ordinance.

SECTION 12-116 Payment of Assessment

A. Any Assessment under Section 12-115 of this Ordinance shall be due and payable upon receipt thereof and shall become delinquent twenty-five (25) days thereafter.

B. Payments shall be made by certified check payable to the order of the Kayenta Township.

C. Interest on any delinquencies shall accrue from the date of the Assessment until paid in full. Interest shall be calculated using a rate five percent (5%) above the highest prime rate listed on the date of the Assessment by any bank operating within the Navajo Nation, and said rate shall continue in effect until such Assessment is paid in full or otherwise discharged.

D. Monies collected through payment of Assessments and any interest thereon shall be deposited in the General Fund of the Township.

SECTION 12-117 Notice to Commission

The Manager shall deliver a copy of any Notice and/or Assessment, and any subsequent notices, pleadings, orders, or other documents or materials filed with or by the Manager, or by any party to any appeal, to the Commission and any department, agency or official thereof as may be deemed appropriate by the Manager.

SECTION 12-118 Appeals

A. Any Person who receives a Notice pursuant to Section 12-114 or an Assessment pursuant to Section 12-115 may appeal by filing with the Commission, with a copy to the

Manager. a notice of appeal within fifteen (15) days of the date such Notice or Assessment was served on such Person.

B. The notice of appeal shall be in writing and shall:

1. Identify the Person who is trespassing or alleged to be trespassing and the location and date of the alleged Trespass, and shall include a short statement of facts indicating the nature and circumstances of the alleged Trespass;

2. Specify the Notice or Assessment being appealed and attach a copy thereof;

3. Specify the legal basis for the appeal; and

4. Include a statement of facts upon which the appellant relies in support of the appeal and such argument as appellant may care to make in support of the appeal.

C. Within five (5) days after receipt of a notice of appeal, the Commission shall assign the appeal to a qualified and impartial hearing officer.

D. If a Person is properly served with a Notice and/or Assessment and fails to file and serve a notice of appeal within the time permitted under this Section, then such Person shall have waived any further right to challenge the Notice and/or Assessment, the appeal shall be promptly dismissed with prejudice, and the Notice and/or Assessment shall be final and binding on such Person.

SECTION 12-119 Stay Upon Appeal

A. The filing of a notice of appeal with the Commission shall not stay the enforcement of the Notice or Assessment. However, an appellant may file a motion for stay of enforcement at any time. A stay may be granted by the hearing officer where justice so requires, and upon such terms and conditions (including without limitation the posting of a bond or other security) as the hearing officer may find just and proper. An order granting or denying a stay or granting a stay on conditions shall be in writing and shall state the grounds therefor, and an order granting a stay shall state the terms and conditions thereof, if any. The hearing officer may decrease or increase the amount of any bonding requirement to reflect any cessation or continuation of alleged wrongful conduct during the course of proceedings under this Ordinance.

B. An order granting or denying a stay, and any terms or conditions of an order granting a stay, shall be final and may be appealed only to any Township municipal court or, if no such municipal court exists, to a Navajo Nation court of competent jurisdiction in accordance with the rules of such court by filing a notice of appeal with the Clerk of such court within thirty (30) days of the entry and service of such order. The filing of such an appeal shall not stay the enforcement of the Notice or Assessment.

SECTION 12-120 Hearing and Decision

A. The hearing officer shall hear the appeal within thirty (30) days of receipt of the notice of appeal by the Commission. Upon request by either the Township or the appellant, or upon their agreement, and for good cause shown, the hearing officer may grant a continuance of not more than forty-five (45) days for the hearing.

B. The hearing officer shall give the parties at least ten (10) days' notice of the date, time and place of the hearing. Each party at the hearing may be represented by counsel and shall have the opportunity to subpoena witnesses, present evidence, and examine witnesses, provided, that nothing in this Ordinance shall be construed to amend or affect the operation of the Navajo Sovereign Immunity Act or to waive or abrogate the sovereign immunity of the Township. If a Person deemed to be in Trespass claims that his or her use or occupancy of Land is authorized by a Lease, Easement or Right-of-Way, Operating Agreement or Permit, the burden of production, going forward, and proof shall be on such Person to produce a certified copy of such Lease, Easement or Right-of-Way, Operating Agreement or Permit.

C. After the hearing, each party shall have ten (10) days to submit in writing proposed findings of fact and conclusions of law. The hearing officer may uphold, reverse, or modify the decision of the Manager or any part thereof.

D. The hearing officer shall issue a decision on the appeal which shall include written findings of fact and conclusions of law within twenty-five (25) days of the conclusion of the hearing.

E. The decision of the hearing officer shall be final and may be appealed by any party to any Township municipal court, or, if no such municipal court exists, to a Navajo Nation court of competent jurisdiction in accordance with the rules of such court by filing a notice of appeal with the Clerk of such court within thirty (30) days of the entry and service of such decision. The filing of such an appeal shall not stay the enforcement of such decision. The Court shall review the decision of the hearing officer on the administrative record only. The decision of the hearing officer shall be affirmed unless the decision is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; contrary to any right, power, privilege, or immunity protected under the Navajo Bill of Rights; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; without observance of procedure required by law; or unsupported by substantial evidence in the record.

SECTION 12-121 Enforcement of Valid Leases, Easements or Rights-of-Way, Operating Agreements or Permits

A. The Manager may take any action authorized or allowed under the provisions, terms and conditions, and covenants of an applicable Lease, Easement or Right-of-Way, Operating Agreement or Permit, or agreement relating thereto, and may take any other action as may be authorized or allowed under applicable law.

B. The Manager may request any other government official or agency with jurisdiction to enforce:

1. The provisions, terms and conditions, and covenants of any Lease. Easement or Right-of-Way, Operating Agreement or Permit, or agreement relating thereto: and

2. Any federal, Navajo, state or local laws applicable to any Lease. Easement or Right-of-Way, Operating Agreement, Permit, or agreement relating thereto. or relating to the conduct of business or other use, occupancy or other activity on the Lands involved.

SECTION 12-122 Judicial Enforcement

At the request of the Manager or otherwise, the Township's legal counsel or the Attorney General of the Navajo Nation may bring a civil action in any court of competent jurisdiction to enjoin a Trespass or to obtain payment or enforcement of any Assessment. or for such other relief as may be authorized or allowed under any applicable law.

SECTION 12-123 Reservation of Rights

Nothing in this Ordinance is intended, nor shall it be construed, to limit the independent rights or to abrogate any duties of the Township or of the Navajo Nation and its Attorney General or of the United States of America or any of its agencies. including without limitation the Bureau of Indian Affairs and the Department of Justice. to take any action authorized or required by applicable law to enjoin, redress, and/or seek damages. including without limitation actual, compensatory, consequential, special. and punitive damages. attorney fees and costs of suit, for any Trespass on Lands of the Township or any damages or harm related to the actions or omissions of a trespasser.

SECTION 12-124 Effective Date; Publication

A. The effective date of this Ordinance shall be the date specified by the Commission in the adopting resolution.

B. The Town Manager shall promptly upon enactment of this Ordinance make available and, to the extent deemed appropriate, distribute and/or post copies of this Ordinance to members of the public within the Township.

CHAPTER 13

KAYENTA TOWNSHIP
SOLID WASTE ORDINANCE

ARTICLE I	**GARBAGE AND TRASH COLLECTION**
SECTION 13-101	TITLE
SECTION 13-102	DEFINITIONS
SECTION 13-103	COLLECTION AGENCY
SECTION 13-104	COLLECTION HOURS AND RATES
ARTICLE II	**PREPARATION OF REFUSE FOR COLLECTION**
SECTION 13-201	PREPARATION OF REFUSE
SECTION 13-202	LOCATIONS FOR PICK UP
SECTION 13-203	LIDS AND COVERS OF CONTAINERS
SECTION 13-204	USE OF CONTAINERS
ARTICLE III	**OTHER METHODS OF GARBAGE AND TRASH REMOVAL**
SECTION 13-301	HAULING REFUSE
SECTION 13-302	VEHICLES AND RECEPTACLES TO BE SPILLPROOF
SECTION 13-303	SPILLED REFUSE
SECTION 13-304	DUMPING REFUSE
ARTICLE IV	**PROHIBITED ACTS**
SECTION 13-401	DISPOSAL, COLLECTION, TRANSPORTING, PROCESSING
SECTION 13-402	OPEN BURNING
SECTION 13-403	OPEN DUMPING
ARTICLE V	**REMOVAL OF LITTER**
SECTION 13-501	DEFINITIONS
SECTION 13-502	LITTER ON PRIVATE PROPERTY
SECTION 13-503	OWNER TO MAINTAIN PREMISES
SECTION 13-504	PROCEDURE TO COMPEL REMOVAL OF LITTER
SECTION 13-505	NOTICE TO REMOVE
SECTION 13-506	SERVICE OF NOTICE
SECTION 13-507	APPEAL TO COMMISSION
SECTION 13-508	REMOVAL BY THE TOWNSHIP
SECTION 13-509	LIEN FOR REMOVAL

SECTION 13-510 PLACEMENT OF DEBRIS

ARTICLE VI MISCELLANEOUS
SECTION 13-511 SEVERABILITY
SECTION 13-512 EFFECTIVE DATE; PUBLICATION

SOLID WASTE ORDINANCE

ARTICLE I - GARBAGE AND TRASH COLLECTION

SECTION 13-101 Title

This Chapter shall be cited as the Kayenta Township Solid Waste Ordinance (for purposes of this Ordinance, the "Ordinance").

History

KTCJA-03-13 (Jan. 14, 2013) adopted the initial ordinance.
KTCF-05-16 (Feb. 5, 2016) amended the initial ordinance.

SECTION 13-102 Definitions

A. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water.

B. "Garbage" means all putrescible wastes, except sewage and body wastes, including all organic wastes that have been prepared for, or intended to be used for food or have resulted from the preparation of food, including all such substances from all public and private establishments and residences.

C. "Open burning" means kindling or maintaining a fire where the products of combustion are emitted directly into the ambient air without passing through a stack or a chimney. This includes burning in a burn barrel.

D. "Open dump" means any facility or site where solid waste is disposed of and which does not comply with the requirements established for solid waste disposal facilities pursuant to this Ordinance and the regulations promulgated hereunder.

E. "Open dumping" means the act of depositing solid waste in a non-complying manner or management practice.

F. "Person" means any individual, public or private corporation, company, partnership, firm, association or society of persons; the federal, state or local governments or any of their programs or agencies, any Indian tribe, including the Navajo Nation, or any of its agencies, divisions, departments, programs, enterprises, companies, chapters or other political subdivisions.

G. "Refuse" means all garbage, trash and brush. It does not include unacceptable waste.

H. "Trash" means all nonputrescible waste.

I. "Unacceptable waste" means waste that is unacceptable at the solid waste disposal facility or landfill, such as (1) pathological and biological waste (including but not limited to sharps, needles and the like), oil sludge, cesspool or other human waste, human remains, street sweepings, large items of machinery and equipment such as automobile and vehicular parts, tires, trailers, agricultural equipment, marine vessels, or similar items, farm and other large machinery, wire and cable from industrial sources, plastics from industrial sources in excess in total of five percent of the Township's waste load, foundry sands, tree stumps, liquid wastes and slurries, explosives (including ammunition and firearms), and radioactive materials; (2) any item of waste exceeding six feet six inches in any one of its dimensions or being in whole or in part a solid mass, the solid portion of which has dimensions such that a sphere with a diameter of eight inches could be contained within such solid portion; (3) animal remains, dirt, concrete and other non-burnable construction material and demolition debris; (4) chemicals from industrial and commercial sources such as cleaning fluids, petroleum products, paints, acids, caustics, pesticides, insecticides, poisons, drugs or other materials the processing of which the Township reasonably believes would pose a threat to health or safety or the processing of which may cause damage to the solid waste disposal facility; (5) any waste which if processed, would violate or cause the violation of any judicial decision, order or action of any federal, state, or local government or any agency thereof or applicable law; and (6) Hazardous Waste, except for household hazardous waste as defined under Section 13-201(G).

SECTION 13-103 Collection Agency

The Township, the collection agent of the Township, or other collectors authorized by the Kayenta Township Commission ("Commission") or by the Town Manager shall collect all refuse within the Township for disposal at the Township's solid waste disposal facility or landfill. No person, except as provided in this Chapter, shall collect or gather refuse within the Township.

SECTION 13-104 Collection Hours and Rates

A. The hours of collection of refuse shall be designated by the Town Manager.

B. The Commission shall from time to time fix the rates and classifications for garbage and trash collection within the Township and shall make such other rules and regulations as may be necessary to properly administer and enforce this Chapter.

ARTICLE II - PREPARATION OF REFUSE FOR COLLECTION

SECTION 13-201 Preparation of Refuse

All refuse shall be prepared for collection and disposal as follows:

A. Containers. The Township shall provide containers to residential customers for the accumulation, storage and collection of all garbage and trash collected by the Township.

The Township will only collect garbage and refuse that is properly contained in the containers provided by the Township. Containers provided by the Township shall be kept in good repair and in a sanitary condition. Containers found to be no longer serviceable because of disrepair or because they were maintained in an unsanitary condition may be removed by the Township. To obtain a new container from the Township, customers whose containers are no longer serviceable because of failure to keep container in good repair and in a sanitary condition will need to pay a replacement fee to the Township.

B. Garbage and trash. Garbage and trash shall be put into securely-tied plastic garbage bags and placed by the customer in Township-provided containers. The customer is responsible for setting customer's garbage and trash out for collection in the appropriate manner and at the appropriate time.

C. Brush. Brush, trees and tree limbs shall be cut into a size not to exceed four feet in length or fifty pounds in weight so that one person can readily load the individual pieces into a truck or chipper and shall be piled in a neat pile with all long branches parallel to one another and tied together. All metal or foreign materials shall be removed from such pile to facilitate chipping.

D. Construction Building Materials. All owners, contractors and builders of structures shall, upon the completion of any structure, gather and haul away, at their sole cost and expense, all refuse of every nature which has resulted from the building of such structure, including all lumber scraps, shingles, plaster, brick, stone, concrete and other building materials, and shall leave the lot and all nearby premises utilized in such construction in good and clean condition. Residential customers may dispose of small amounts of building materials from time to time, provided the building materials are placed in a container as described above and such container does not contain concrete, masonry or soil, paint or hazardous waste.

E. By-Products. Any commercial or manufacturing establishment which by the nature of its operation creates an unusual amount of by-products may be required to dispose of its own waste, in compliance with all applicable federal, state, tribal or local law.

F. Dangerous household and hazardous waste. Dangerous household and hazardous waste, including but not limited to, batteries, household chemicals, pesticides, insecticides, fungicides, herbicides, fluorescent bulbs and mercury containing devices, used oil, gasoline, paints, varnishes, and solvents shall be placed in a proper separate container, plainly marked *DANGER*. The Township reserves the right to deny service for certain dangerous or hazardous wastes and may require the customer to properly dispose of it by other lawful means.

G. Soil and Concrete. Waste soil, concrete, masonry blocks, sod and rocks shall be properly disposed of by the owner, tenant or occupant of the premises.

SECTION 13-202 Locations for Pick Up

A. Garbage and Trash (Residential). All collections of garbage and trash will be made from the curb of the street.

1. Storage of containers. All containers shall be stored no closer to the street than the front building line of the residence.

2. Location for curbside pickup. Containers to be picked up by curb-side services shall be set behind the front curb or adjoining sidewalk immediately next to the curb or sidewalk and shall be set out after 6:00 p.m. the day preceding regular collection and shall be removed from the curb by 7:00 p.m. the day of collection.

B. Garbage and Trash (Commercial). Commercial garbage and trash containers as authorized or provided by Township shall be located in such places as authorized by the Town Manager or his//her authorized representative, but in no case shall they be located in front of the building line of a commercial building.

C. Trash and Brush. Trash and brush shall be set at the front of the street curb on the street so as not to block the sidewalk or gutter or create a hazard to pedestrian and vehicular traffic. Such trash and brush shall be set out after 6:00 p.m. the day preceding regular collection. Any brush should be bundled and tied together.

SECTION 13-203 Lids and Covers of Containers

The lids or covers of all containers shall at all times be kept secure so that flies, insects and other animals will not have access to the contents of the containers. The lids or covers may only be removed while the containers or receptacles are being filled, emptied or cleaned.

SECTION 13-204 Use of Containers

Garbage and trash containers shall not contain unacceptable waste. Placement of hot ashes, cinders, coals or other burning material in containers is strictly prohibited.

ARTICLE III - OTHER METHODS OF GARBAGE AND TRASH REMOVAL

SECTION 13-301 Hauling Refuse

It is unlawful for any person to haul or cause to be hauled any refuse on or along any public street, avenue or alley in the Township in violation of any of the provisions of this Chapter..

SECTION 13-302 Receptacles to be Spillproof

It is unlawful for any person to haul or cause to be hauled on or along any public street in the Township any refuse or garbage unless such refuse or garbage is contained in strong watertight vehicles or vehicles with watertight receptacles that are constructed to prevent any such garbage or refuse from falling, leaking, spilling, or emitting any odor.

SECTION 13-303 Spilled Refuse

Any person hauling any refuse along the streets of the Township shall immediately clean up and remove any refuse that falls out of the conveyance used for hauling.

SECTION 13-304 Dumping Refuse

It is unlawful for any person to place or cause to placed any refuse upon any public or private property within the Township, except as specifically permitted by this Chapter.

ARTICLE IV - PROHIBTED ACTS

SECTION 13-401 Disposal, Collection, Transporting, Processing

A. It shall be unlawful for any person to:

1. Dispose of any solid waste in a manner that will harm the environment, endanger the public health, safety and welfare or create a public nuisance;

2. Dispose of any solid waste in a place other than a facility which is in compliance with these regulations and other applicable laws;

3. Dispose of bulk or non-containerized liquids in a solid waste disposal facility;

4. Collect, dispose of, transport, process or store solid waste in any manner or at any facility that is not in compliance with the provisions of this Chapter or any regulations promulgated hereunder;

5. Interfere with or prohibit inspections, entry or monitoring activities; or

6. Violate any other provision, requirement or prohibition of this Chapter, including but not limited to a regulation or plan adopted pursuant to this Chapter, a filing, reporting or notice requirement under this Chapter, or a fee assessed under this Chapter.

B. The on-site disposal of on-site generated solid waste from a family ranch or farm is not prohibited where said disposal does not, according to the Town Manager, create a public health or environmental hazard or public nuisance and is in compliance with Section 13-402.

SECTION 13-402 Open Burning

All open burning is prohibited, unless specifically permitted by this Ordinance.

A. Open burning of all residential refuse is prohibited.

B. Open burning of all refuse from a commercial or industrial establishment is prohibited.

C. Open burning of the following materials is prohibited.

1. Construction and demolition waste.

2. Hazardous substances, including but not limited to, batteries, household chemicals, pesticides, used oil, gasoline, paints, varnishes, and solvents.

3. Furniture and appliances.

4. Tires or rubber materials.

5. Any plastic materials including but not limited to nylon, PVC, ABS, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.

6. Corrugated cardboard, container board, office paper or newspapers.

7. Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives.

D. Open burning of dead trees, logs, brush, stumps, leaves, and grass clippings is allowed only in accordance with all of the following provisions:

1. Open burning shall be conducted in a safe, nuisance-free manner, when wind and weather conditions minimize adverse effects and do not create a health hazard or a visibility hazard on roadways or airfields. Open burning shall be conducted in conformance with all local fire protection regulations.

2. Open burning shall be conducted only on the property on which the materials were generated.

3. Opening burning under this Section is not permitted in housing subdivisions or densely populated residential areas.

4. Open burning under this Section shall only be conducted at a location at least 100 feet from the nearest building which is not on the same property.

5. Open burning shall only be conducted only during the hours of 8:00 am to 5:00 pm during the months of May through October.

6. Open burning shall be constantly attended and supervised by a competent person of at least eighteen (18) years of age until the fire is extinguished and is cold. The person shall have readily available for use such fire extinguishing equipment as may be necessary for the total control of the fire.

7. No materials may be burned upon any street, curb, gutter or sidewalk.

8. Open burning of weeds, brush, and crop stubble on ranches and agricultural lands is allowed if conducted in accordance with this Subsection D.

SECTION 13-403 Open Dumping

All open dumping is prohibited.

ARTICLE V - REMOVAL OF LITTER

SECTION 13-501 Definitions

In this Chapter unless the context requires otherwise:

A. "Litter" means any rubbish, trash, weeds, filth and debris which shall constitute a hazard to public health and safety and shall include all putrescible and nonutrescible solid waste, including garbage, trash, ashes, street cleaning, dead animals, abandoned automobiles, and solid market and industrial waste; any deposit, accumulations, pile or heap of brush, grass, debris, weeds, cans, cloth, paper, wood, rubbish, or other unsightly or unsanitary matter of any kind whatsoever; and any growth of weed, brush, grass or vegetable growth to a height of over six inches.

B. "Private Property" means any dwelling, house, building or other structure, designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily or continuously uninhabited or vacant, and shall include any yard, grounds, walks, driveways, porches, steps, or vestibules belonging to or appurtenant to such dwelling, house, building or other structure.

C. "Public Places" means any and all streets, sidewalks, boulevards, alleys or other public ways and any and all public parks, squares, spaces, grounds and buildings.

D. "Abandoned automobiles" means any motor vehicle or major portion thereof which is incapable of movement under its own power and will remain so without repair and/or reconstruction. It also means vehicles being repaired when such repairs take in excess of ninety (90) days. The absence of current vehicular registration as required by law shall be *prima facie* evidence of inoperability under this definition. This definition shall not include any motor vehicles in an enclosed building or so located upon private property as to not be readily visible from any public place or from the surrounding private property. Further, this definition shall not include any motor vehicle on the premises of a business

enterprise operated in a lawful place and in a lawful manner when keeping and maintaining the vehicle is necessary to the operation of such business enterprise.

SECTION 13-502 Litter on Private Property

No person shall throw or deposit litter on any occupied or unoccupied private property within the Township, whether owned by such person or not, except that the owner or person in control of private property may maintain authorized private receptacles for collection in such a manner that litter will be prevented from being carried or deposited by the elements upon any public place.

SECTION 13-503 Owner to Maintain Premises

The owner or person in control of any private property shall at all times maintain the premises free of litter; provided, however, that this Section shall not prohibit the storage of litter in authorized private receptacles for collection.

SECTION 13-504 Procedure to Compel Removal of Litter

The Town Manager shall enforce the provisions of Sections 13-502 and 13-503 hereby by prosecuting violators of said sections in the Kayenta Navajo Nation District Court pursuant to the provisions of this Code. If such prosecution fails to secure compliance with the provisions of said sections, or in the event of inability to prosecute violators by reason of failure to secure jurisdiction over their persons, the Town Manager shall compel the removal of litter by the procedures outlined in Sections 13-505 through 13-509 hereof.

SECTION 13-505 Notice to Remove

To compel the removal of litter through the provisions of this Section and of Sections 13-506 through 13-509, if a person owning or controlling any property fails, neglects or refuses to remove or properly dispose of litter located on property owned or controlled by such person, he shall be given written notice by the Town Manager to remove all litter from such property within thirty days from the date the notice was received.. Such notice shall be received not less than fifteen (15) days before the date set thereon for compliance and shall contain an estimate of the cost of removal by the Township, a statement that unless the person owning or controlling the property complies within thirty (30) days from the date such written notice is received that the Township will, at the expense of the person owning or controlling the property, perform the necessary work at a cost not to exceed the estimate given in the notice, and that such person may appeal in writing to the Township within thirty (30) days from the date the notice is received and prior to the date of compliance.

SECTION 13-506 Service of Notice

Notice shall be personally served on the owner or person controlling such property, by a Navajo police officer in the manner provided in Rule 4 of the Navajo Nation Rules of Civil Procedure, or mailed to the owner or person controlling such property at the address of the

property by certified or registered mail. If the owner does not reside on such property, a duplicate notice shall also be sent to him by certified or registered mail at his last known address.

SECTION 13-507 Appeal to Commission

Prior to the date set for compliance on the notice, the owner or person controlling such property may appeal in writing to the Commission from the demand of the Town Manager. The Commission shall at its next regular meeting after receiving the appeal, hear and determine the same. The decision of the Commission shall be final. The Commission may either affirm or reverse the decision of the Town Manager or modify the scope of work as required in the notice.

SECTION 13-508 Removal by the Township

When any such person to whom notice has been given on or before the date of compliance on the notice, or within such further time as may have been granted by the Commission on appeal, fails, neglects or refuses to move from such property any and all litter, the Town Manager is authorized and directed to cause the same to be removed and disposed of at the expense of the owner or person controlling such property. Upon completion of the work, the Town Manager shall prepare a verified statement of account of the actual cost of such removal or abatement, the date the work was completed and the street address and the legal description of the property on which said work was done, including five percent for additional inspection and other incidental costs in connection therewith, and shall serve a duplicate copy of such verified statement upon the person owning or controlling such property in the manner prescribed in Section 13-506 hereof. The owner or person controlling such property shall have thirty days from the date of service upon him to appeal in writing to the Commission from the amount of the assessment as contained in the verified statement. If an appeal in not filed with the Town Manager within thirty days, then the amount of the assessment as determined by the Town Manager shall become final and binding. If an appeal is taken, the Commission shall at its next regular meeting, hear and determine the appeal and may affirm the amount of the assessment, modify the amount thereof, or determine that no assessment shall be made. The decision of the Commission shall be final and binding on all persons.

SECTION 13-509 Lien for Removal

If no appeal is taken from the amount of the assessment, or if an appeal is taken and the Commission has affirmed or modified the amount of the assessment, the original assessment or the assessment as so modified shall be recorded in the Navajo Nation District Court and from the date of its recording shall be a lien on said lot or tract of land until paid. Such liens shall be subject to and inferior to any liens for Navajo Nation taxes and to all prior recorded mortgages and encumbrances of record. A sale of the property to satisfy the lien in the Navajo Nation District Court at any time after the recording of the assessment, but failure to

enforce the lien by such action shall not affect its validity. The recorded assessment shall be *prima facie* evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording thereof. A prior assessment for the purposes provided in this Section shall not be a bar to subsequent assessment or assessments for such purposes, and any number of liens on the same lot or tract of land may be enforced by the same action.

SECTION 13-510 Placement of Debris

It is unlawful for any person to place any rubbish, trash, filth or debris upon any private or public property not owned or under the control of said person. In addition to any fine which may be imposed for violation of any provision of this Section, such person shall be liable for all costs which may be assessed pursuant to this Article for the removal of said rubbish, trash, filth, or debris.

SECTION 13-511 Severability

If any provision of this Ordinance, or its application to any Person or class of Persons, or to any lands or in a particular circumstance, is held invalid or unlawful for any reason by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

SECTION 13-512 Effective Date; Publication

A. The effective date of this Ordinance is February 5, 2016.

B. The Town Manager shall promptly upon enactment of this Ordinance make available and, to the extent deemed appropriate, distribute and/or post copies of this Ordinance to members of the public within the Township.

CHAPTER 14

KAYENTA TOWNSHIP
SEX OFFENDER REGISTRATION AND REPORTING ORDINANCE

SECTION 14-101	TITLE
SECTION 14-102	DEFINITIONS
SECTION 14-103	APPLICABILITY
SECTION 14-104	SEX OFFENSES
SECTION 14-105	REQUIRED REGISTRATION AND INFORMATION
SECTION 14-106	TIMING AND UPDATING OF REGISTRATIONS OF PERSONS SUBJECT TO ORDINANCE; FAILURE TO APPEAR
SECTION 14-107	PUBLIC SEX OFFENDER REGISTRY WEBSITE
SECTION 14-108	REQUIRED AND PROHIBITED INFORMATION
SECTION 14-109	NOTIFICATIONS
SECTION 14-110	IMMUNITY
SECTION 14-111	CRIMES AND CIVIL SANCTIONS

SEX OFFENDER REGISTRATION AND REPORTING ORDINANCE

SECTION 14-101 Title

This Chapter shall be cited as the Kayenta Township Sex Offender Registration and Reporting Ordinance.

History

KTCO-89-11 (Oct. 12, 2011)

SECTION 14-102 Definitions

A. *Convicted* means:

1. An adult sex offender is "convicted" for the purposes of this Ordinance if the sex offender has been found guilty of a sex offense or a finding of guilt has been entered upon a plea of *nolo contendere* or if the sex offender has otherwise been subjected to penal consequences based upon a judgment or finding of guilt of a sex offense, however styled.

2. A juvenile sex offender is "convicted" for the purposes of this Ordinance if the juvenile sex offender is either:

   a. Prosecuted and found guilty, or a finding of guilt has been entered upon a plea of *nolo contendere*, as an adult for a sex offense; or

   b. Prosecuted and found guilty, or a finding of guilt has been entered upon a plea of *nolo contendere*, or adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse as described in either subsection (a) or (b) of section 2241 of title 18, United States Code, or was an attempt or conspiracy to commit such offense.

B. *Dru Sjodin National Sex Offender Public Website* ("NSOPW") means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

C. *Employee* means any person who is self-employed or works for any other person or entity, regardless of compensation, including, for registration purposes hereunder, volunteers of a Navajo Nation agency or organization.

D. *Foreign Conviction* means a conviction, or finding of guilt upon a plea of *nolo contendere*, obtained or entered outside of the United States of America.

E. *Immediate* or *Immediately* means within three (3) business days.

F. *Imprisonment* means incarceration in a federal, state, local or tribal prison, reformatory, correctional institution. jail. Bureau of Indian Affairs or military holding or punitive or correctional facility. whether any such facility or institution is publicly operated or is operated under contract with any such federal, state, local or tribal government or agency thereof, including without limitation. for registration purposes, house arrest following conviction of a covered sex offense during the period of such house arrest.

G. *Jurisdiction* means the Navajo Nation: any federally recognized Indian tribe, nation or Pueblo; any of the fifty states: the District of Columbia; the Commonwealth of Puerto Rico; Guam; American Samoa: the Commonwealth of the Northern Mariana Islands; and the United States Virgin Islands.

H. *Minor* means a person under the age of 18 years.

I. *National Sex Offender Registry* means the national database maintained by the Federal Bureau of Investigation pursuant to 42 U.S.C. § 16919.

J. *Residence* means the location of a person's home or any other place where the person typically or periodically lives or sleeps.

K. *Sex Offender* means a person convicted of a sex offense.

L. *Sex Offense* means any offense set forth in Section 14-201, any offense contained in 42 U.S.C. § 16911(5). as amended: and any offense listed in Section 14-104 of this Ordinance;

M. *Sex Offender Registry* means the registry of sex offenders, and a notification program, maintained by the Kayenta Township.

O. *SMART Office* means the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16945.

P. *Sexual Act* means:

1. contact between the penis and the vulva or the penis and the anus, where, for purposes of this definition. contact involving the penis occurs upon penetration, however slight;

2. contact between the lips or mouth and the penis, the mouth and the vulva, or the mouth and the anus;

3. the penetration. however slight. of the anal or genital opening of another by a hand or finger or other appendage or by any object with an intent to abuse, humiliate, harass,

degrade, or arouse or gratify the sexual desire of a person; or

4. the intentional touching, either directly or through the clothing, of the genitalia of another person that has not attained the age of 18 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of a person.

Q. *Sexual Contact* means the intentional touching, either directly or through the clothing, the genitalia, anus, groin, breast, inner thigh, or buttocks of any other person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desires of another person.

R. *SORNA* means the Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child Protection and Safety Act of 2006, P.L. 109-248, codified at 42 U.S.C. § 16911, *et seq.*, as amended.

S. *Student* means a person enrolled or otherwise attending either a private or public education institution, including a secondary school, trade or professional school, or college or university or other institution of higher education.

SECTION 14-103 Applicability

Any person who resides or whose domicile is located within, or who attends or is employed by any school or child care facility within, Navajo Indian country, the Navajo Nation, and/or fee lands owned by the Navajo Nation regardless of the location of such fee lands and who has been convicted of any of the following offenses, or who has entered a plea of *nolo contendere* to a charge that the person committed any sex offense as set forth in Section 14-102 is subject to the requirements of this Ordinance; provided, however, that an offense involving consensual sexual conduct is not a sex offense for the purposes of this Ordinance if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or it the victim was at least 13 years old and the offender was not more than four (4) years older than the victim.

SECTION 14-104 Sex Offenses

Sex offenses include the following:

A. *Navajo Nation offenses.* Any offense described in 17 N.N.C. §§ 401, 402, 442, 443, 443A, 444 (provided, however, that for purposes of this Ordinance, a violation of such section 444 shall not be deemed to occur unless the sexual conduct was consensual and the victim was at least thirteen (13) years of age and the offender was not more than four (4) years older than the victim), and 453 (2005), as those sections may be amended from time to time, and any other sex offense required to be reported under 17 N.N.C. § 220(D) (2005) or other applicable Navajo law.

B. *Federal offenses.* Any offense included in the definition of "sex offense" at 42 U.S.C. §

16911(5), and including any offenses which may be prosecuted under the federal Assimilative Crimes Act, 18 U.S.C. § 1152 or § 1153; and any offense under the following sections of the United States criminal code (18 U.S.C.): 1591 (sex trafficking of children). 1801 (video voyeurism of a minor), 2241 (aggravated sexual abuse), 2242 (sexual abuse). 2243 (sexual abuse of a minor or ward), 2244 (abusive sexual contact). 2245 (offenses resulting in death). 2251 (sexual exploitation of children), 2251A (selling or buying of children). 2252 (material involving the sexual exploitation of a minor). 2252A (material containing child pornography), 2252B (misleading domain names on the internet), 2252C (misleading words or digital images on the internet), 2260 (production of sexually explicit depictions of a minor for importation into the United States), 2421 (transportation of a minor for illegal sexual activity), 2422 (coercion and enticement of a minor for illegal sexual activity), 2423 (transportation of a minor for illegal sexual activity, travel with the intent to engage in illicit sexual conduct with a minor, engaging in illicit sexual conduct in foreign places), 2424 (failure to file factual statement about an alien individual), and 2425 (transmitting information about a minor to further criminal sexual conduct).

C. *State and other Tribal offenses.* Any criminal offense committed in any State or other tribal jurisdiction that involves a sexual act or sexual contact, and any such offense involving:

1. Any conduct that by its nature is a sex offense against a minor;

2. Physical contact with a minor or the use of the internet to facilitate or attempt such contact, including offenses whose elements involve the use of persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;

3. False imprisonment;

4. Kidnapping;

5. Possession, production or distribution of child pornography;

6. Solicitation of a minor to engage in a sexual act or sexual contact, including any direction, request, enticement, persuasion, or encouragement of a minor to engage in a sexual act or sexual conduct;

7. Use of a minor in a sexual performance; or

8. Any offense comparable to that proscribed in 18 U.S.C. §§ 1591, 1801, 2241, 2242, 2244, 2422(b), and/or 2423(a).

D. *Military offenses.* Any offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Pub. L. 105-119, *codified at* 10 U.S.C. § 951 note.

E. *Juvenile offenses.* Any criminal offense, or attempt or conspiracy to commit any criminal offense comparable to or more severe than the federal crime of aggravated sexual abuse as provided in 18 U.S.C. § 2241(a) and/or (b) and committed by a minor who is 14 years of age or older at the time of the offense, including engaging in a sexual act by force or threat of violence, or by rendering a person unconscious or drugging the victim.

F. *Foreign offenses.* Any offense involving any conduct listed in this Section where the offender was convicted under the laws of and in the courts of Canada, the United Kingdom, Australia, New Zealand or other country which the United States State Department, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

SECTION 14-105 Required Registration and Information

A. A sex offender who is required to register with the Township hereunder shall provide all of the information described in this Section to the Kayenta Town Manager or his or her authorized delegate (the "Town Manager"). The Township shall strive to maintain all information obtained hereunder in a digitized form and in an electronic database in a form capable of electronic transmission. The Town Manager may promulgate regulations under this Ordinance for its administration for the approval of the Kayenta Township Commission.

B. Such sex offender shall provide to the Town Manager and update as required:

1. The sex offender's criminal history, including without limitation (a) the date of all arrests, (b) the date of all convictions or determinations of guilt on a plea of *nolo contendere*, (c) his or her status of parole, probation or supervised release, (d) his or her registration status, (e) the text of each provision of law defining each criminal offense for which the sex offender is registered or is being registered, and (f) any outstanding arrest warrants.

2. The sex offender's actual date of birth and any other date of birth used by the sex offender.

3. Unless the sex offender demonstrates that his or her DNA is already contained in the Combined DNA Index System (CODIS), a sample of his or her DNA, which the Town Manager shall submit to an appropriate Navajo Nation, state or federal agency under policies and procedures to be adopted by the Town Manager.

4. All of the sex offender's driver's licenses issued by any jurisdiction, including any invalid licenses, to be copied by the Town Manager for the sex offender's file.

5. All of the sex offender's identification cards including without limitation tribal

enrollment card or papers, passports, Social Security card, and any immigration documents used by the sex offender, to be copied by the Town Manager for the sex offender's file.

6. The name and address of the sex offender's employer or similar information related to any transient or day labor employment.

7. Finger and palm prints. to be submitted to an appropriate Navajo Nation, state, and/or federal agency under policies and procedures to be adopted by the Town Manager.

8. All email addresses. Instant Message addresses and identifiers, all other designations and monikers used for self-identification in internet communications or postings. and all designations used by the sex offender for the purpose of routing or self-identification in internet communications or postings, including without limitation to social network identifications, twitter accounts, video posting site identifications. such as You Tube. and similar accounts or uses.

9. The sex offender's full given name, all nicknames, aliases, and pseudonyms regardless of the context in which used, and all ethnic or tribal names by which the sex offender is commonly known, not including sacred names not commonly known.

10. All land line telephone numbers, cellular telephone numbers, and Voice Over IP (VOIP) telephone numbers used by or in the name of the sex offender.

11. His or her photograph acceptable in likeness and clarity to the Town Manager in his or her sole discretion, which shall be updated each six calendar months by the sex offender. The Town Manager may also take a photograph of the sex offender for the Township's files under policies and procedures to be adopted by the Town Manager.

12. Information identifying all professional licenses to engage in an occupation or to carry out a trade or business.

13. The address of each residence at which the sex offender resides or is domiciled or will or plans to reside or be domiciled and a description identifying each location where the sex offender resides or is domiciled or will or plans to reside or be domiciled regardless of whether such location is also identifiable by a street address.

14. If the sex offender is or will be attending school, the name and address of each school where the sex offender is or will be a student.

15. A written physical description, including unusual characteristics, scars, moles, birthmarks, and/or tattoos.

16. The sex offender's valid Social Security Number and any other purported Social Security Number the sex offender has used.

17. When the sex offender is or will be absent from his or her primary residence or domicile for more than seven consecutive days, all appropriate information regarding temporary lodging including location, address, and name of establishment or owner or lessee or renter; and the dates the sex offender will be staying at each such location, such information to be provided in person by the sex offender at least five days before the scheduled absence

18. Any intent to engage in international travel and all appropriate information regarding such intended or planned travel, such information to be provided in person by the sex offender at least twenty-one (21) days in advance of the travel, and such information to be provided by the Town Manager to all appropriate federal agencies and databases under policies and procedures to be adopted by the Town Manager.

19. License plate numbers, registration numbers or identifiers, and general description (e.g., make model, color and year) of each vehicle owned or operated by the sex offender for work or personal use or otherwise, and the location where any vehicle is parked or otherwise maintained, including land vehicles, aircraft, and watercraft.

The Town Manager may adopt such forms as he or she deems appropriate in his or her sole discretion to facilitate compliance with the above requirements.

C. A sex offender required to register under this Ordinance shall appear in person at the Township for purposes of verification and maintaining current information at least once each year for the rest of his or her life. At each such in-person verification, the sex offender shall permit the Township to take a photograph of the sex offender, and the sex offender shall cooperate with the Town Manager in assuring that all information in the sex offender's file is updated and accurate. The Town Manager shall immediately notify all other appropriate jurisdictions of any change in the information or status regarding the sex offender and shall similarly update the Township's public website, if applicable, and other appropriate databases, including without limitation the NCIC/NSOR. The Town Manager may require more frequent appearances and registrations depending on the severity of the sex offense and other relevant factors under policies and procedures that the Town Manager may adopt in his or her sole discretion.

D. The sex offender shall read, or have read to them, and date and sign a form stating that the duty to register hereunder has been explained to him or her by the Town Manager and that the sex offender understands the registration requirement. The Town Manager shall countersign and date such form and upload such signed form into the Township's sex offender registry.

SECTION 14-106 Timing and Updating of Registrations of Persons Subject to Ordinance; Failure to Appear

A. The sex offender must register with the Township within three (3) business days of

establishing a residence or domicile, commencing employment, or becoming a student at a school within the Kayenta Township.

B. The requirements for registration hereunder apply to all persons who have been convicted of a sex offense, whether prior to the date of the enactment of this Ordinance or not. Sex offenders subject to this Ordinance (e.g., those who reside or are domiciled or are employed or go to school within the Township) shall register in person and supply the information required hereunder to the Town Manager within ninety (90) days of the enactment of this Ordinance.

C. All sex offenders subject to this Ordinance shall appear immediately in person to update any changes to his or her name, residence (including termination of residence), employment, or school attendance; changes to temporary lodging information, changes to vehicle information, identifiers, contact information, and telephone number. In the event of a change in temporary lodging of over seven days, the sex offender shall also immediately notify the Town Manager of the intended new place of residence as well as the registry official of such location. The Town Manager may notify the jurisdiction in which the sex offender will be temporarily staying or the appropriate Navajo Nation official.

D. Any sex offender who is a student in any capacity within the Township who changes his or her school or terminates schooling within the Township shall immediately appear in person at the Township to update that information. The Town Manager may notify any jurisdiction in which the sex offender will be continuing his or her education or to which the offender will move, or the appropriate Navajo Nation official.

E. Any sex offender who is employed by the Township in any capacity or otherwise employed within the Township whose employment status changes shall immediately appear in person at the Township to update his or her employment information. The Town Manager may notify any jurisdiction where the offender may or will seek or obtain employment, or the appropriate Navajo Nation official.

F. If a sex offender fails to register with and provide information to and/or appear personally before the Township as required by this Ordinance, the Town Manager shall immediately inform the appropriate official of the Navajo Nation of that fact.

G. If the Town Manager receives information that a sex offender subject to this Ordinance has absconded, the Town Manager shall make an effort to determine if the sex offender has actually absconded. If no determination can be made and if the sex offender cannot be located, the Town Manager shall notify the appropriate official of the Navajo Nation of those circumstances.

SECTION 14-107 Public Sex Offender Registry Website

A. The Township shall maintain a public sex offender registry website (the "Website").

subject to any budgetary or manpower constraints.

B. The Website shall (1) include links to sex offender safety and education resources, (2) include instructions on how a person may seek correction of information that the person believes is erroneous, (3) include a warning that the information contained on the Website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working or going to school at any reported addresses and that any such action could result in civil or criminal penalties, (4) have the capability of conducting searches by geographic radius, and (5) shall include in the design all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as may be required by the Attorney General of the United States.

SECTION 14-108 Required and Prohibited Information

A. Subject to any budgetary or manpower constraints, the following information shall be made available to the public on the Website:

1. Notice that an offender is in violation of his or her registration requirements or cannot be located if the sex offender may have absconded;

2. All sex offenses for which the sex offender has been convicted;

3. The sex offenses(s) for which the offender is currently registered;

4. The address of the sex offender's employer(s);

5. The name of the sex offender including all aliases;

6. A current photograph of the sex offender;

7. A physical description of the sex offender;

8. The sex offender's residential address and description of the place of abode;

9. Addresses of all schools being attended by the sex offender; and

10. The sex offender's vehicle license plate number and description of vehicles.

B. The following information shall not be made available to the public on the Website:

1. Any arrest which did not result in the conviction of the sex offender;

2. The sex offender's Social Security Number;

3. Any travel and immigration documents;

4. The identity of any victim; and

5. Internet identifiers.

SECTION 14-109 Notifications

A. Whenever a sex offender registers or updates his or her information with the Township, the Town Manager shall inform the appropriate official of the Navajo Nation and enter or update the information posted on the Website.

B. Subject to budgetary or manpower constraints, the Township shall ensure that there is an automated community notification process in place that:

1. Upon a sex offender's registration or update of information with the Township, the Website is immediately updated, and

2. The Township's registry has a function that enables the general public to request an email notice that will notify it when a sex offender commences residence, employment or schooling within the Township, and identifies the sex offender by name.

SECTION 14-110 Immunity

A. Nothing in this Ordinance shall be construed to waive the sovereign immunity of the Township, its departments, agencies, employees, Commissioners, agents, or officials.

B. Any person acting in good faith in matters relating to this Ordinance shall be immune from any civil or criminal liability arising out of such action.

SECTION 14-111 Crimes and Civil Sanctions

A. Each violation of a provision of this Ordinance by a sex offender who is a member of a federally recognized Indian tribe shall be a crime and subject to a period of incarceration of up to 3 years and/or a fine of $5,000.00.

B. Each violation of a provision of this Ordinance by a sex offender who is not a member of a federally recognized Indian tribe shall be a civil violation subject to enforcement by any means not prohibited by federal or Navajo Nation law, including without limitation civil fines or penalties of up to $5,000.00 per violation, forfeiture of any property used by the sex offender in effecting the violation, and exclusion from the Township for all purposes, as deemed appropriate by the appropriate court of the Navajo Nation.

C. Any person who knowingly harbors, attempts to harbor, assists another in harboring or

attempting to harbor a sex offender who is in violation of this Ordinance, provides false information to law enforcement agency regarding a sex offender, or assists a sex offender in eluding a law enforcement agency that is seeking to find, question or arrest the sex offender for noncompliance with the requirements of this Ordinance is guilty of a civil offense subject to enforcement by any means not prohibited by federal or Navajo Nation law, including without limitation civil fines or penalties of up to $1,000.00 per violation, forfeiture of any property used to effect such violation, and exclusion from the Township for all purposes, as deemed appropriate by the appropriate court of the Navajo Nation.

D. In any civil or criminal action to enforce the above, the Township shall be the plaintiff.

CHAPTER 15

KAYENTA TOWNSHIP
ALCOHOL AND CONTROLLED SUBSTANCE ORDINANCE

SECTION 15-101	TITLE
SECTION 15-102	FINDINGS, PURPOSE; SAVINGS PROVISION
SECTION 15-103	DEFINITIONS
SECTION 15-104	OFFENSE
SECTION 15-105	PRESUMPTION
SECTION 15-106	SANCTIONS FOR VIOLATION
SECTION 15-107	PROCEEDINGS
SECTION 15-108	ABATEMENT OF NUISANCES; INJUNCTIONS AND RESTRAINING ORDERS
SECTION 15-109	PROTECTION OF MINORS
SECTION 15-110	RELATED REFERRALS AND REQUESTS
SECTION 15-111	NO WAIVER OF SOVEREIGN IMMUNITY
SECTION 15-112	SEVERABILITY
SECTION 15-113	EFFECTIVE DATE; PUBLICATION

ALCOHOL AND CONTROLLED SUBSTANCE ORDINANCE

SECTION 15-101 Title

This Chapter shall be cited as the Kayenta Township Alcoholic Beverage and Controlled Substance Control Ordinance (for purposes of this Ordinance, the "Ordinance").

History

KTCJA-04-13 (Jan. 14, 2013) adopted the initial ordinance.

SECTION 15-102 Findings; Purpose; Savings Provision

A. The Kayenta Township, through its governing body the Kayenta Township Commission and with input from community members and staff, finds that the possession, use, manufacture, transfer, transportation, delivery, sale, trade or other disposition of alcoholic beverages and drugs within the Township destroys the ability of community members to enjoy their lives and property, destroys lives of community members (especially young people), causes serious disrespect for private property and public order, threatens the viability of a thriving community that can attract visitors and employers to the Township, and damages the Township's image and ability to provide a safe, pleasant, and congenial place of living and working for all residents of the Township.

B. This Ordinance is intended to control the possession, use, manufacture, transfer, transportation, delivery, sale, trade, or other disposition of alcoholic beverages and drugs within the Kayenta Township and to provide for the forfeiture of interests in motor vehicles, houses, and other property used in connection with the possession, use, manufacture, transfer, transportation, delivery, sale, trade, or other disposition of such beverages and drugs in violation of this Ordinance and/or for the exclusion from the Township of persons violating this Ordinance.

C. The administration and enforcement of this Ordinance is intended to complement, supplement, and strengthen the Navajo Nation's own efforts to control the misuse of such beverages and drugs; therefore, if any provision of this Ordinance is determined by the Navajo Nation Supreme Court to conflict with Navajo law, the offending provision of this Ordinance shall be stricken and of no effect, but the remainder of this Ordinance shall remain in effect and enforceable to the fullest extent permitted by Navajo law. This Ordinance shall not apply to the lawful possession, use, manufacture, transfer, transportation, delivery, sale, trade, or other disposition of drugs to the extent prescribed by a medical doctor or otherwise permitted under Navajo law.

SECTION 15-103 Definitions

A. "Alcoholic Beverage" means any liquor, beer, ale, wine, whiskey or other beverage which produces alcoholic intoxication, and any other beverage or substance as may be defined by or included within 17 N.N.C. § 410(A) (2005) or any successor law of the

Navajo Nation, as such law may be amended from time to time.

B. "Controlled Substance" means any substance or product listed in 17 N.N.C. § 394(A) (2007 pocket part) or any successor law of the Navajo Nation, as such law may be amended from time to time.

C. "Delivery" or "Deliver" means the actual or constructive transfer of possession to another, with or without consideration, and whether or not there is an agency relationship.

D. "Forfeiture" means forfeiture to the Kayenta Township.

E. "Offender" means a person who commits an offense who is an enrolled member of a federally recognized Indian tribe, nation, band, Pueblo, community, Native Alaskan community, or Native Hawaiian community and who is over ten years of age.

F. "Person" means any natural person over ten years of age.

SECTION 15-104 Offense

A. A Person commits an offense under this Ordinance if he or she possesses, uses, manufactures, transfers, transports, delivers, sells, trades, or otherwise disposes of an Alcoholic Beverage or Controlled Substance within or through the Kayenta Township.

B. A Person commits an offense under this Ordinance if he or she permits his or her car, truck, van, or other motor vehicle to be used in furtherance of an offense described in Section 15-104(A).

C. A Person commits an offense under this Ordinance if he or she permits his or her house, mobile home, trailer, hogan, land, or other property to be used in furtherance of an offense described in Section 15-104(A).

D. A Person commits an offense under this Ordinance if he or she provides material support, including but not limited to financing, in furtherance, or otherwise knowingly participates in the perpetration, of an offense described in Section 15-104(A) or otherwise aids or abets any person committing an offense described in Section 15-104(A).

E. All offenses under this Ordinance shall be considered civil offenses by all Persons who commit any such offense, subjecting the person to the civil remedies (including without limitation forfeitures) set forth below. If any such offense was committed by an Offender, the offense shall constitute a criminal violation, subjecting the Offender to the criminal sanctions set forth below.

SECTION 15-105 Presumption

The possession, custody, or control of any Controlled Substance; or twelve (12) or more

bottles, cans or other containers containing an Alcoholic Beverage the alcoholic content of which is five percent (5%) or greater; or of twenty-four (24) or more bottles, cans or other containers containing an Alcoholic Beverage the alcoholic content of which is more than one-half percent (0.5%) but less than ten percent (10%) shall create a rebuttable presumption that the Person possessing such Controlled Substance or Alcoholic Beverage(s), or who has custody or control of such Controlled Substance or Alcoholic Beverage possesses or possessed such Controlled Substance or Alcoholic Beverages with the specific intent to deliver the same to others as a "bootlegger," "dealer," or otherwise.

SECTION 15-106 Sanctions for Violation

A. Any Person who commits an offense under this Ordinance shall be subject to any or all of the following civil remedies:

1. Forfeiture of any Alcoholic Beverage or Controlled Substance in the possession, custody or control of the Person;

2. A civil assessment of up to $3,000.00;

3. Forfeiture of any car, truck, van, or other motor vehicle used or permitted to be used by the Person in furtherance of an offense under this Ordinance, such property hereby declared to be a nuisance;

4. Forfeiture of any house, mobile home, trailer, hogan or other property (including without limitation any rights to land or the use of land within the Kayenta Township) used or permitted to be used by the Person in furtherance of any offense under this Ordinance, such property hereby declared to be a nuisance;

5. Forfeiture of any money, certificates of deposit, or other funds or rights to funds in any account of a bank, savings and loan, stock brokerage, or other financial institution used in connection with any offense under this Ordinance to the extent, and only to the extent, that such property constitutes either the fruits of or an instrumentality of the an offense; and/or

6. Exclusion from the Kayenta Township.

B. Any Offender who commits an offense under this Ordinance shall be subject to a fine not to exceed $5,000.00 or imprisonment for a term not to exceed 365 days or both; forfeiture of property and funds as described in Section 15-106(A)(1), (3), (4), and/or (5); and/or exclusion from the Kayenta Township. In lieu or of or in addition to any such sanction, the court may impose a sentence of reasonable community service under the supervision of the Kayenta Township and/or any appropriate law enforcement agency, and may impose rehabilitative treatment under the supervision of an appropriate agency at the expense of the Offender or otherwise.

SECTION 15-107 Proceedings

A. Any civil or criminal action under this Ordinance shall be brought in the name of the Kayenta Township as petitioner or plaintiff in the appropriate court of the Navajo Nation. The Kayenta Township may bring both civil and criminal actions against an Offender based on the same transaction or occurrence. The Kayenta Township may bring such other actions in any other court of competent jurisdiction in order to effectuate any civil remedy permitted under this Ordinance.

B. Any personal or real property of any Person found liable for an offense under this Ordinance, whether civilly or criminally, is subject to forfeiture by the Kayenta Township as set forth above, subject to the following additional conditions

1. The Person is found (by a preponderance of the evidence in civil actions and by proof to a reasonable doubt in criminal actions) to have committed an offense under this Ordinance:

2. There is proof (by a preponderance of the evidence in civil actions and by proof to a reasonable doubt in criminal actions) that such property was used in furtherance of the offense or otherwise in connection with the possession, use, manufacture, transfer, transportation, delivery, sale, trade, or other disposal of an Alcoholic Beverage or Controlled Substance within or through the Kayenta Township and that the owner of such property, if not the Person who committed the offense, knew of should have known that the property was being so used (the "Owner");

3. The Person alleged to have committed an offense under this Ordinance or the Owner, if not such Person, has received adequate notice under applicable law of the proposed forfeiture and has been provided an opportunity to be heard on that issue. For purposes of this subsection, notice of a proposed forfeiture shall be deemed adequate if the forfeiture is alleged in a complaint or petition relating to an offense under this Ordinance, such property to be forfeited is described with reasonable particularity, and such complaint or petition has been duly served in conformity with applicable standards of due process on the Person or Owner;

4. The property forfeited shall be described in an Order to abate the nuisance as part of the judgment in the case, which Order shall direct the removal, destruction or sale thereof in the manner provided for the sale of chattels under execution; provided, however, that upon the sale of any property pursuant to such Order, the officer executing the Order shall, after deducting the expenses of keeping such property and costs of such sale, pay all liens according to their priorities to the extent of the proceeds of such sale, and shall pay the balance to the Kayenta Township to be credited to the general fund of the Kayenta Township; and

5. Notwithstanding anything to the contrary in this Ordinance, any Order concerning the disposition, destruction or other handling of a traditional Navajo hogan shall comply

with special conditions applicable to such property, and the court may seek and consider expert testimony regarding the proper treatment of the same in the particular circumstances of any case.

C. Upon a judgment that an offense was committed under this Ordinance, and upon exhaustion of any appeal from such judgment, the court shall order the Alcoholic Beverages and/or Controlled Substances forfeited to the Kayenta Township and either destroyed or otherwise disposed of, including without limitation disposition under appropriate safeguards to the Navajo Nation or the United States in connection with any criminal or civil action that may be pursued by either or any requirements of Navajo or federal law. A record of the place where such Alcoholic Beverages and/or Controlled Substances were seized or found, the kinds and quantities of the same so destroyed or disposed of, and the time, place and manner of destruction or disposition shall be kept by the Kayenta Township, and a return under penalty of perjury reporting the same shall be made to the court by the officer who destroys or has received such Alcoholic Beverages and/or Controlled Substances. The handling of peyote or *azee'* shall be as provided by 17 N.N.C. § 395 (2007 pocket part) or any successor law of the Navajo Nation, as such law may be amended from time to time.

D. Any Person who has committed an offense under this Ordinance may be excluded from the Kayenta Township after hearing and the entry of an exclusion order by the Navajo Nation District Court for the District of Kayenta, or, in cases involving an imminent threat to public safety, order or health, pending a hearing, on order from the Kayenta Township Commission stated in a resolution of such Commission and expressly subject to appeal to such Court. Any such interim order of exclusion by such Commission shall only be ordered in cases involving such threat and for a period no longer than necessary for an exclusion hearing to be held. Any exclusion order by such Court shall either be for a definite period, or may, under appropriate circumstances, be permanent. A person excluded from the Township may petition the Court for modification of an exclusion order at any time, subject to the rules and orders of such Court. The appropriate law enforcement officials shall effectuate any and all orders of exclusion provided for in this subsection.

SECTION 15-108 Abatement of Nuisances; Injunctions and Restraining Orders

If, in the judgment of the Kayenta Township Commission or its authorized delegate, a nuisance, as defined in Section 15-106(A)(3) or (4) exists or is permitted to exist within the Township, the Township may file an appropriate action in the appropriate court of the Navajo Nation to abate such nuisance, and may, in such action, seek a temporary restraining order and/or preliminary injunction pending the final resolution of such action. The standards for the court determining whether to issue such temporary restraining order and/or preliminary injunction shall be as provided generally in the Navajo Rules of Civil Procedure; provided, however, that the Township shall not be required to post a bond or other security except in extraordinary circumstances as explained in writing by such court.

SECTION 15-109 Protection of Minors

A. A person under ten years of age (for purposes of this Ordinance, a "Minor") who commits or participates in the commission of an offense under this Ordinance shall be referred to the appropriate counseling, child protection, family services or other similar agency for intervention and counseling.

B. Any Person who employs a Minor in the commission or the furtherance of an offense under this Ordinance commits an aggravated offense hereunder, and the civil remedies and/or criminal sanctions, as well as consideration of remedies of exclusion and/or forfeitures, shall reflect such severity of the offense.

C. If a Minor is employed in the commission or the furtherance of an offense by a parent or parents of such Minor, or in circumstances where a parent or parents knew or should have known of such activities, the Kayenta Township shall, in addition to taking any steps authorized by this Ordinance, refer the matter to the appropriate law enforcement and/or social services agencies of the Navajo Nation, with a reasonably detailed summary of the facts, the outcome of any proceedings related thereto, and recommendations, which may include termination of parental rights. The Township shall reasonably cooperate in any proceedings or other steps deemed appropriate by such agencies related to the best interest of the Minor.

SECTION 15-110 Related Referrals and Requests

A. If any Person commits an offense on land subject to a home site lease approved by either the Navajo Nation or an agency of the United States, and that Person is a lessee under such home site lease, or if a lessee under such home site knew or should have known that such land was being used in furtherance of an offense under this Ordinance, the Kayenta Township shall request that the Navajo Nation or such federal agency terminate such home site lease; provided, however, that nothing in this subsection shall be construed to limit the right of the Kayenta Township to the forfeiture (including eventual destruction) of buildings or other property on or affixed to such land or to otherwise abate nuisances on such land as provided in this Ordinance.

B. The Kayenta Township may in its sole discretion, and in addition to or in lieu of taking any action authorized under this Ordinance, refer any offense to Navajo Nation and/or federal prosecution of the Offender or other Person committing any offense under this Ordinance.

C. The Kayenta Township may in its sole discretion file a formal request to the appropriate official of the Navajo Nation to file a petition seeking the exclusion of any Person who committed an offense under this Ordinance in conformity with 17 N.N.C. §§ 1901-1902 (2005), as that law may be amended from time to time.

SECTION 15-111 No waiver of Sovereign Immunity

Nothing in this Ordinance is intended, nor shall it be construed. to waive the sovereign immunity of the Kayenta Township or any of its Commissioners. officials, employees or agents.

SECTION 15-112 Severability

If any provision of this Ordinance, or its application to any Person or class of Persons, or to any lands or in a particular circumstance, is held invalid or unlawful for any reason by a court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby and shall remain in full force and effect.

SECTION 15-113 Effective Date; Publication

A. The effective date of this Ordinance shall be the date specified by the Commission in the adopting resolution.

B. The Town Manager shall promptly upon enactment of this Ordinance make available and, to the extent deemed appropriate, distribute and/or post copies of this Ordinance to members of the public within the Township.

CHAPTER 16

KAYENTA TOWNSHIP
ANIMAL CONTROL ORDINANCE

ARTICLE I, GENERAL

SECTION 16-101	TITLE
SECTION 16-102	AUTHORIZATION
SECTION 16-103	PURPOSE(S)
SECTION 16-104	DEFINITIONS

ARTICLE II, ANIMAL CONTROL

SECTION 16-201	LIMIT ON NUMBER OF ANIMALS PERMITTED
SECTION 16-202	NUISANCES
SECTION 16-203	ANIMALS AT-LARGE
SECTION 16-204	ABANDONMENT OF ANIMALS
SECTION 16-205	CRUELTY TO ANIMALS
SECTION 16-206	POISONOUS SUBSTANCES
SECTION 16-207	MAINTAINING SANITORY CONDITIONS
SECTION 16-208	DEAD ANIMALS
SECTION 16-209	LEASH
SECTION 16-210	TYING OR STAKING
SECTION 16-211	QUARANTINING OF ANIMALS EXPOSED TO RABIES
SECTION 16-212	ANIMALS AT FOOD ESTABLISHMENTS
SECTION 16-213	INTERFERENCE WITH PUBLIC UTILITIES EMPLOYEES

ARTICLE III, DANGEROUS ANIMALS

SECTION 16-301	NUISANCE DECLARED
SECTION 16-302	PRESUMPTION OF ANIMAL'S DANGEROUSNESS
SECTION 16-303	COMPLAINTS
SECTION 16-304	INVESTIGATION
SECTION 16-305	HEARING
SECTION 16-306	DEFENSES

ARTICLE IV, IMPOUNDMENT

SECTION 16-401	REASONS FOR IMPOUNDMENT
SECTION 16-402	PROPERTY OWNERS MAY IMPOUND
SECTION 16-403	ISSUANCE OF NOTICE OR CITATION
SECTION 16-404	LENGTH OF IMPOUNDMENT
SECTION 16-405	IMPOUNDED ANIMAL BECOMES PROPERTY OF TOWNSHIP
SECTION 16-406	SICK OR INJURED ANIMALS
SECTION 16-407	RECLAIMING ANIMALS AND IMPOUNDMENT FEES
SECTION 16-408	OWNER RESPONSIBLE FOR ALL DAMAGES CAUSED BY ANIMAL
SECTION 16-409	AUTHORITY TO REQUEST AND ISSUE WARRANTS

ARTICLE V, LICENSING OF ANIMALS

SECTION 16-501	LICENSE REQUIRED
SECTION 16-502	APPLICATION FOR LICENSE
SECTION 16-503	PROOF OF RABIES VACCINATION REQUIRED
SECTION 16-504	PAYMENT OF LICENSE FEE; EXPIRATION AND RENEWAL
SECTION 16-505	ISSUANCE OF LICENSE TAGS
SECTION 16-506	REQUIREMENT THAT TAGS BE WORN
SECTION 16-507	USE OF LICENSE TAGS
SECTION 16-508	CHANGE OF OWNERSHIP
SECTION 16-509	LOST OR DESTROYED TAGS
SECTION 16-510	REVOCATION OF LICENSE'

ARTICLE VI, LIVESTOCK

SECTION 16-601	KEEPING OF LIVESTOCK
SECTION 16-602	UNLAWFUL FOR LIVESTOCK TO BE AT LARGE
SECTION 16-603	LIABILITY
SECTION 16-604	DEAD LIVESTOCK

ARTICLE VII, ANIMAL CONTROL FACILITIES

SECTION 16-701	PERMIT REQUIRED
SECTION 16-702	SAFE AND SANITARY CONDITION OF FACILITY
SECTION 16-703	PENALTY FOR VIOLATION

ARTICLE VIII, ENFORCEMENT

SECTION 16-801	ENFORCEMENT DUTIES
SECTION 16-802	INTERFERENENCE WITH ANIMAL CONTROL OFFICER
SECTION 16-803	SELF DEFENSE
SECTION 16-804	PRIVATE PROPERTY
SECTION 16-805	ENTRY AND INSPECTION OF ANIMAL RELATED FACILITIES

ARTICLE IX. VIOLATIONS AND FEES AND PENALTIES

SECTION 16-901 VIOLATIONS
SECTION 16-902 FEES. PERMITS. FINES AND PENALTIES

ANIMAL CONTROL ORDINANCE

ARTICLE I - GENERAL

Section 16-101 Title

This Chapter shall be cited as the "Animal Control Ordinance." which is hereby amended in its entirety, and shall read as follows.

Section 16-102 Authorization

A. This Chapter is enacted pursuant to the general police power of the Kayenta Township ("Township") and the authorities granted to municipalities and chapters by the Navajo Nation. 26 N.N.C. § 1 *et seq.*, 2 N.N.C. §§ 4021-4029, 2 N.N.C. § 4081 *et seq.*

B. Nothing in this Chapter is intended to conflict with any applicable and controlling Navajo Nation law or regulation. Specifically, this Chapter is intended to be construed harmoniously with Navajo Nation Dog and Cat Control law, 13 N.N.C. § 1701, *et seq.*, and is not intended to impede or impair the authority of the Navajo Nation or its officials to enforce such law within the boundaries of the Township.

C. All housing subdivisions within the Township shall comply with the requirements of this Chapter and shall be primarily responsible for enforcing the rules and regulations concerning animals within their lease area.

Section 16-103 Purpose(s)

The purposes of this Chapter are to ensure the humane treatment of animals by regulating the care and control of animals within the Township and to promote the public health, safety, and general welfare of the citizens of the Township.

Section 16-104 Definitions

When used in this Chapter, the following words, terms, and phrases, and their derivations shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

A. *Animal* means any live cat or dog, both domestic and wild.

B. *Animal Control Office* means the animal control office, department or division of the Township.

C. *Animal Control Officer* means an employee of the Township or an agent designated by the Township to administer and enforce the licensing, inspection, and/or enforcement requirements contained within this Chapter. The Animal Control Officer shall meet the training and qualifications defined by the Kayenta Township, which shall include at a

minimum, completion of Levels 1 through 3 of the National Animal Control Association ("NACA") training. If the Animal Control Officer has not completed such training, he or she shall be required to complete such training within six (6) months of the date of hire. If the Animal Control Officer will be conducting Level 3 activities, he or she have the certificate required for such level or obtain such certificate within three (3) months after the date of hire.

D. *Animal shelter* means any facility operated or licensed by the Township for the temporary care, confinement and detention of animals and for the humane and other disposition of animals.

E. *Attack* means any biting or attempted biting or other action by an animal that places a person in danger of imminent bodily harm, or the biting of another animal.

F. *Cruelty* means any act or omission whereby unjustifiable physical pain, suffering or death of an animal is caused or permitted, including failure to provide proper drink, air, space, shelter or protection from the elements, a sanitary and safe living environment, veterinary care, or nutritious food in sufficient quantity. In the case of activities where physical pain is necessarily caused, such as in medical and scientific research, food processing, customary and normal veterinary and agricultural husbandry practices, pest elimination, and animal training and hunting, "cruelty" shall mean a failure to employ the most humane method reasonably available.

G. *Dispose* or *disposition* means adoption, quarantine, voluntary or involuntary custodianship or placement of an animal, or euthanasia humanely administered to an animal. "Disposition" shall include placement or sale of an animal to the general public or removal of an animal from any pet shop to any other location.

H. *Hearing Officer* means an attorney or tribal advocate licensed to practice in the Navajo Nation Courts hired by the Township to hold hearings on a periodic and as-needed basis pursuant to Article III.

I. *Impoundment* means the taking into custody of an animal by any Animal Control Officer or his authorized representative.

J. *Kayenta Township* or *Township* means the government overseeing the physical area covered by this Chapter, which shall include all lands under the jurisdiction of the Kayenta Township pursuant to Navajo Nation Council Resolution CN-86-85 (Nov. 5, 1985), as amended.

K. *Licensed or Registered Veterinarian* means any veterinarian duly licensed to practice within the United States or the Navajo Nation.

L. *Licensing Authority* means the Animal Control Office of the Township or any organization designated and authorized by the Township to act as the licensing authority on behalf of the Township.

M. *Livestock* means any horse, stallion, mare, gelding, filly, colt, mule, hinny, jack, jenney, all species of swine, sheep, goat, llama, and all species of cattle.

N. *Owner* means any person or persons, firm, association or corporation, having temporary or permanent custody of, sheltering or having charge or custody of, harboring, keeping, exercising control over, or having property rights to, any animal covered by this Chapter. An animal shall be deemed to be harbored if it is fed or sheltered for three (3) or more consecutive days.

O. *Quarantine* means to obtain or isolate an animal suspected of being infected with rabies or any contagious disease.

ARTICLE II – ANIMAL CONTROL

Section 16-201 Limit on Number of Animals Permitted

It shall be unlawful for any person to own or keep more than four (4) animals in any combination at any one time. Notwithstanding the foregoing, any foster families designated by the Township shall be permitted to temporarily own or keep more than four (4) animals, so long as such foster family maintains compliance with regulations pertaining to fostering standards promulgated by the Township.

Section 16-202 Nuisances

A. It shall be unlawful for any person to keep any animal on any property when the keeping of such animal constitutes a nuisance or menace to the public health or safety.

B. A nuisance involving an animal shall include the following:

1. Any animal that attacks a person or another animal or endangers the life or health of persons or other animals.

2. Any animal, whether or not on the property of its owner, that without provocation, molests, attacks, or otherwise interferes with the freedom of movement of persons in public areas or a public right-of-way.

3. Any animal that is offensive or dangerous to the public health, safety or welfare by virtue of the number of animals maintained at a single residence or the inadequacy of the facilities.

4. Any animal that unreasonably annoys humans or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property, including but not limited to, making disturbing noises, continued and repeated howling, barking, whining, or other utterances causing unreasonable annoyance, disturbance, or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.

5. Any animal that damages, soils, defiles, or defecates on any property other than that of its owner.

6. Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored.

7. Any animal that is found at large pursuant to Section 7-203.

8. Any dog in a public area unless the dog is controlled by a leash or similar physical restraint:

9. Any animal in heat that is not confined so as to prevent attraction or contact with other animals.

10. Any animal that chases motor vehicles in a public right-of-way.

Section 16-203 Animals At-Large

It shall be unlawful for any owner of any animal to permit any animal to be at large, which shall include any animal that is not tied, staked, or restrained securely within an enclosure or fence while on the premises of its owner or not on a leash under the immediate control of its owner or other person responsible for the animal when off the premises of its owner.

Section 16-204 Abandonment of Animals

It shall be unlawful for any owner of any animal to willfully abandon such animal on any street, road. highway or public place, or on private property when not in the care of another person.

Section 16-205 Cruelty to Animals

A. It shall be unlawful for any person to willfully or maliciously strike, beat, abuse, or intentionally run down with a vehicle any animal, or otherwise engage in any act to cause or inflict unnecessary pain. injury, suffering, or death to such animal; except that reasonable force may be used to drive away vicious or trespassing animals.

B. It shall be unlawful to tease, annoy, disturb, molest or irritate an animal that is confined to the owner's premises.

C. It shall be unlawful for an owner to leave an animal unattended for long periods of time on the owner's premises without food or water. If an Animal Control Officer determines that an animal is or will be without proper care because of the owner's absence, injury, illness, incarceration or other involuntary absence, the Animal Control Officer may impound such animal until reclaimed by its owner. The owner is responsible for all costs associated with the impoundment and must pay all costs before the animal is released. If the animal is not reclaimed by the owner within forty eight (48) hours from the date of impoundment, the animal shall become the property of the Township.

Section 16-206 Poisonous Substances

It shall be unlawful for any person. except a licensed veterinarian for humanitarian purposes, to administer poison to any animal, or knowingly leave any poisonous substance of any kind or ground glass in any place with the intent to injure any animal. The provisions of this Section are not applicable to licensed exterminators using poisons as part of a pest control program or the use of commercial insecticides and rodent baits used to control insects and wild rodents.

Section 16-207 Maintaining Sanitary Conditions

A. It shall be unlawful for any owner of any animal to cause or allow such animal to soil, defile or defecate on any public property or upon any street. sidewalk, public way, play area or upon private property other than that of the owner, unless such owner immediately removes and disposes of all feces deposited by such animal by the following methods: (i) Collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and (ii) Removal of such bag or container to the property of the animal owner and disposition thereafter in a manner as otherwise may be permitted by law.

B. It shall be unlawful for any person owning, harboring, keeping, or in charge of any animal to permit any waste matter from the animal to collect and remain on the property of the owner, or on the property of others so as to cause or create an unhealthy, unsanitary, dangerous or offensive living condition on the owner's property, or to the abutting property of others.

C. It shall be unlawful for any person owning, harboring, keeping, or in charge of any animal to cause unsanitary, dangerous or offensive conditions by virtue of the size or number of animals maintained at a single location or due to the inadequacy of the facilities.

Section 16-208 Dead Animals

It shall be the duty of the owner of any animal that dies within the Township to immediately remove and dispose of the dead animal at a site identified by the Township, which site shall be designated and permitted by Navajo Nation Environmental Protection Agency and to pay all fees associated with disposal. If an owner of the dead animal neglects or refuses to remove the animal within twenty four (24) hours after discovery of the dead animal, the Township shall remove the animal at the expense of the owner or keeper. The owner shall be liable for such expenses and the Township may recover the expenses by civil action. Whenever the owner of the dead animal cannot be found or ascertained, the Township shall remove and dispose of the animal at the designated site or landfill.

Section 16-209 Leash

A. Any dog, while on a street, sidewalk, public way or in any public area shall be restrained and secured by a leash or chain of sufficient tensile strength to restrain the particular

dog. Said leash or chain shall not be longer than fifteen (15) feet in a public park and shall not be longer than six (6) feet on or in any other place. An animal that is not restrained in compliance with this Subsection shall be considered at large in violation of Section 7-203.

B. Although cats shall be exempt from any leash requirements, it shall be unlawful for any owner of a cat to allow said cat to stray onto the property of anyone except the owner. Any cat found straying onto the property of anyone except that of its owner shall be deemed a public nuisance and shall be subject to impoundment by the Animal Control Officer.

Section 16-210 Tying or Staking

A. It shall be unlawful for any animal to be tied or staked upon any open or unfenced lot or land in a manner which allows the animal to come within ten (10) feet of any street, park or other public land or within ten (10) feet of any sidewalk, public passageway or building. An animal tied or staked in violation of this paragraph shall be considered at large in violation of Section 7-203.

B. If an animal is tied or staked, regardless of location, it shall be unlawful for the tie, tether, cable or chain securing the animal to be less than ten (10) feet in length. If a cable or chain is used, it shall be unlawful for the cable or chain to weigh more than one-quarter the weight of the animal. It shall be unlawful to tie, tether, chain, stake or fasten an animal in such a manner as to cause it injury or pain or not permit it to reach shelter, food or water. The owner of the animal or the person actually tying or staking the animal shall be responsible for the offense.

Section 16-211 Quarantining of Animals Exposed to Rabies

Any animal that has rabies, or symptoms thereof, or that is suspected of having rabies, or that has been exposed to rabies, shall be handled in a manner consistent with Navajo law regarding the disposition of animals exposed to rabies, which is incorporated herein by reference. See 13 N.N.C. § 1706. It shall be unlawful for any owner to fail to comply with a quarantine requirement or condition, including a home quarantine ordered by an Animal Control Officer. If an owner fails to comply, in addition to any criminal penalties, the animal shall be immediately seized and impounded.

Section 16-212 Animals at Food Establishments

A. It shall be unlawful for an owner of any animal to allow or permit such animal to enter, be or remain within any store, restaurant, café, shop, building, structure or place where food is offered for sale, displayed, served or handled for human consumption.

B. It shall be unlawful for any manager, clerk, employee, owner or operator of any place where food is offered for sale, displayed, served or handled for human consumption to allow or permit any animal to enter, be or remain within said place.

C. Support animals such as guide dogs that are trained to assist an employee or other person who is handicapped shall be exempt from this Section.

Section 16-213 Interference with Public Utilities Employees

It shall be unlawful for any owner or person to strategically place an animal so that the animal interferes with meter readers and other employees of public utilities in performing their duties.

ARTICLE III – DANGEROUS ANIMALS

Section 16-301 Nuisance Declared

It is hereby declared to be a public nuisance for an owner or other person to harbor, keep, or maintain a dangerous animal in the Township.

Section 16-302 Presumption of Animal's Dangerousness

An animal is presumed dangerous for purposes of this Article, if the animal commits an unprovoked attack against a person or another animal.

Section 16-303 Complaints

A. Should any person including the Animal Control Officer desire to file a complaint concerning an animal which is believed to be a dangerous animal, a sworn, written complaint must first be filed with the Animal Control Office containing the following information:

1. Name, address, and telephone number of complainant and other witnesses;

2. Date, time, and location of any incident involving the animal;

3. Description of the animal;

4. Name, address, and telephone number of the animal's owner, if known;

5. A statement describing the facts upon which such complaint is based; and

6. A statement describing any incidents where the animal has exhibited dangerous propensities in past conduct, if known.

B. It shall be unlawful for a person to file a complaint that is willfully or knowingly false or malicious. A fine shall be imposed on the person making such false or malicious claim.

Section 16-304 Investigation

After a sworn complaint is filed with the Animal Control Office. the Animal Control Officer shall investigate the complaint. If the Animal Control Officer determines that there is sufficient evidence to believe the animal did commit an unprovoked attack against a person or another animal. he may file a complaint pursuant to Section 7-303.

Section 16-305 Hearing

A. Jurisdiction. The jurisdiction for the determination of a dangerous animal in a proceeding brought under this Chapter shall be vested in a Hearing Officer hired by the Kayenta Township.

B. Notice. If a complaint is filed with the Hearing Officer, the Hearing Officer shall set the case for a hearing and shall give notice of the hearing to the owner of the animal named in the complaint by personal service or certified mail, return receipt requested. a least ten (10) days prior to the hearing date. Personal service may be completed by the Animal Control Officer or his designated representative.

C. Impoundment Pending Hearing. If the animal has not already been impounded, the Animal Control Officer shall seize and impound the animal upon personal service of the notice of hearing on the owner or three (3) days after the notice of hearing is mailed to the owner by certified mail. return receipt requested. It shall be unlawful for a person to possess and fail to release to an Animal Control Officer an animal that has been made the subject of a hearing under this Section. No person shall be allowed to reclaim the animal while a hearing under this Section is pending.

D. Purpose of Hearing. The purpose of the hearing is for the Hearing Officer to determine if the animal specified in the complaint is a dangerous animal. The hearing shall not commence until the complaint has been filed and notice has been properly served on the complainant.

F. Result of Hearing.

1. If the Hearing Officer finds that the animal is a dangerous animal:

a. The Hearing Officer shall order that the animal be destroyed or permanently removed from the Township, based on the least restrictive means necessary to protect the public health, safety, and welfare of the community according to all of the evidence presented.

b. And if the owner is not present at the hearing, the clerk shall notify the owner of that decision as well as the ordered disposition of the animal by personal service or certified mail. return receipt requested. Personal service may be completed by the Animal Control Officer.

c. The Hearing Officer shall order that the owner of the animal pay any fees due for the impoundment of the animal within 30 days of the order.

d. And if the Hearing Officer orders the removal of the animal from the Township, the owner shall have five (5) days from the date of the order to remove the animal. The owner must provide proof of the removal to the Hearing Officer within five (5) days after the deadline to remove. If adequate proof is not provided to the Hearing Officer within the required time, an Animal Control Officer shall investigate and if the animal is found within the Township, the Animal Control Officer shall immediately seize and impound the animal. Upon impoundment of such animal, the animal becomes the property of the Township and the Township shall dispose of the animal in any manner in its sole discretion. If the animal has been previously removed from the Township or is not present in the Township on the date of the hearing, the Hearing Officer shall order that animal shall be permanently banned from the Township and not be allowed to return. If the banned animal is found within the Township, the Animal Control Officer shall impound it and the Township shall dispose of the animal in any manner it its sole discretion.

e. And if the Hearing Officer orders the destruction of the animal, the Animal Control Officer shall notify the facility where the animal is kept.

2. If the Hearing Officer finds that the animal is not a dangerous animal, the animal shall be released to the owner upon payment by the owner of any maintenance fees due.

G. Unlawful to Disobey Order. It shall be unlawful for a person to possess and fail to release an animal that has been ordered destroyed or removed by the Hearing Officer to an Animal Control Officer.

Section 16-306 Defenses

In a hearing pursuant to Section 7-305, the hearing officer shall determine that an animal is not dangerous if he or she finds that:

1. The threat, injury, or damage was sustained by a person who at the time was committing a willful trespass or other tort upon the premises occupied by the owner of the animal.

2. The person was teasing. tormenting, abusing, or assaulting the animal or has, in the past been observed or reported to have teased, tormented, abused, or assaulted the animal.

3. The animal attacked or killed was at the time teasing, tormenting, abusing or attacking the alleged dangerous animal.

4. The animal was protecting or defending its owner within the immediate vicinity of the animal from an unjustified attack or assault.

5. The animal was injured and responding to pain.

6. The animal was protecting its offspring or itself within the owner's premises.

7. The person is an employee of a law enforcement agency and trains or uses dogs for law enforcement or corrections purposes; provided however, that for any person to qualify for this defense, that person must be acting within the course and scope of his or her official duties as regards to the animal.

8. The person is a veterinarian, a person employed by a recognized animal shelter or person employed by a government or other organization to deal with stray animals and has temporary ownership, custody or control of the animal; provided however, that for any person to qualify for this defense, that person must be acting within the course and scope of his or her official duties as regards to the animal.

ARTICLE IV – IMPOUNDMENT

Section 16-401 Reasons for Impoundment

A. In addition to any other remedies provided in this Chapter, an Animal Control Officer may seize, impound, and humanely confine to an animal shelter or hospital:

1. Any animal without a valid license tag pursuant to Sections 7-505 and 7-506;

2. Any animal at large pursuant to Section 7-203;

3. Any animal constituting a public nuisance pursuant to Section 7-202;

4. Any animal that is reasonably suspected of having or determined to have rabies or a contagious disease;

5. Any animal that is in violation of any quarantine or confinement order of the Township or the Township's Hearing Officer;

6. Any animal that has committed an unprovoked attack on a person or another animal;

7. Any animal that is charged with being dangerous or potentially dangerous to public health and safety pursuant to Article III, pending a hearing;

8. Any animal that the Hearing Officer or Kayenta District Court has ordered impounded or destroyed;

9. Any animal that is considered stray, unwanted or abandoned, as in situations where the owner is deceased. has been arrested or evicted from his regular place of residence;

10. Any animal that is unattended and ill, injured or otherwise in need of care;

11. Any animal that is reasonably believed to have been abused or neglected;

12. Any animal that is kept illegally;

13. Any animal that has attacked, injured or killed livestock; or

14. Any animal that is in violation of this Chapter or whose owner is in violation of this Chapter.

Section 16-402 Property Owners May Impound

Any person finding an animal at large upon his property may remove the same to any animal shelter that will take possession of the animal. If no such shelter is available, the property owner may hold the animal in his own possession. and as soon as possible, notify the Animal Control Office. The property owner shall provide a description of the animal and the name of the owner if known. The Animal Control Office shall dispatch an Animal Control Officer to take possession of the animal.

Section 16-403 Issuance of Notice or Citation

In addition to, or in lieu of, impounding an animal found at large, an Animal Control Officer may issue to the known owner of such animal a citation for a violation of this Chapter.

Section 16-404 Length of Impoundment

Except as provided in Articles II. the Township shall keep any licensed and unlicensed animal impounded for not fewer than forty-eight (48) hours before disposing of said animal without the consent of the owner.

Section 16-405 Impounded Animal Becomes Property of Township

A. Any animal impounded in the animal shelter for a period exceeding the times specified in this Chapter shall become the property of the Township and may be disposed of in any manner by the Township in its sole discretion.

B. Any abandoned or unclaimed animal may be sold or placed for adoption. All animals shall be spayed and neutered prior to adoption. Adoption fees may include all or part of the costs of an examination, rabies inoculation and spaying and neutering.

Section 16-406 Sick or Injured Animals

When an animal is not wearing a tag of any kind so that the rightful owner cannot be notified of their animals' sickness or injuries, any obviously sick or injured animals may be humanely euthanized by the Animal Control Officer or his authorized representative.

Section 16-407 Reclaiming Animals and Impoundment Fees

It shall be unlawful for any person to remove any impounded animal from the animal shelter or other facility without the consent of the Licensing Authority. provided an owner reclaiming an impounded animal shall pay all impound fees. vaccination fees. and boarding fees for animals before the animal shall be returned to the owner. If the animal is impounded for roaming at large and reclaimed within 24 hours of impoundment. penalties for roaming at large may be waived.

Section 16-408 Owner Responsible for all Damages Caused by Animal

The owner of an animal shall be liable for all damages or injuries that may be caused by the animal to other persons, animals or property.

Section 16-409 Authority to Request and Issue Warrants

An Animal Control Officer may apply for and obtain a warrant or other legal writ from the Kayenta District Court to seize any animal alleged to be in violation of this Chapter from private residences. The Kayenta District Court shall have the authority to issue such warrant.

ARTICLE V – LICENSING OF ANIMALS

Section 16-501 License Required

It shall be unlawful for any person to own, keep, or harbor any animal over the age of three (3) months within the Township unless such animal is has been issued a valid, current license by the Licensing Authority of the Township. A rabies certificate issued pursuant to Section 7-603 shall be required before a license is issued.

Section 16-502 Application for License

Application for such license shall be made by the owner to the Township within ten (10) days after acquiring any dog or cat over three (3) months of age or within ten (10) days after a dog or cat becomes three (3) months of age; provided that any owner moving to the Township for the purpose of establishing residence, and otherwise required to obtain a license, shall have until ten (10) days after moving to obtain such a license.

Section 16-503 Proof of Rabies Vaccination Required

A. All owners applying for a license must present a written Certificate of Anti-Rabies Vaccination by a licensed veterinarian, or must otherwise show to the satisfaction of the

Licensing Authority of the Township that the animal for which the license is being obtained has been inoculated against rabies. Said certificate must show the name and address of the owner of said animal and contain a description of the color, breed, sex and weight of said animal together with the kind and amount of vaccine used and the date of administration, and certifying that said animal was so vaccinated and immunized against rabies.

B. It shall be unlawful for any animal present in the Township not to be vaccinated against rabies. Every owner of an animal shall furnish proof of rabies vaccination prior to being issued a license under Section 7-501.

Section 16-504 Payment of License Fee; Expiration and Renewal

A license fee shall be paid at the time of making application as required by the Licensing Authority. An animal license shall be renewed annually and no later than the date of its expiration.

Section 16-505 Issuance of License Tags

Upon payment and acceptance of the license fee and proof of rabies vaccination, the Licensing Authority shall issue a durable license tag, stamped with the year of issuance and an identification number for the animal for which the license has been obtained. Said license shall also contain information indicating that the animal has been inoculated for rabies or a separate rabies tag shall be issued.

Section 16-506 Requirement That Tags Be Worn

It shall be unlawful for any animal for which the owner is required to obtain a license to not wear a valid license tag required by Section 7-505 at all times, securely attached to a collar around the neck of the animal.

Section 16-507 Use of License Tags

It shall be unlawful for any person to use a license for any animal other than the animal for which the license was issued. It shall also be unlawful for any person to remove from the neck of any animal the license tag issued pursuant to Section 7-505, or alter such tag in any manner.

Section 16-508 Change of Ownership

If there is a change in ownership of a licensed animal, the new owner shall have the license transferred to his name. Application for such transfer shall be made to the Licensing Authority and be accompanied by the required fee.

Section 16-509 Lost or Destroyed Tags

If such tag is lost or destroyed, the owner shall apply to the Licensing Authority of the

Township for a replacement tag by presentation of the applicable vaccination-registration certificate accompanied by the required fee.

Section 16-510 Revocation of License

If any person holding a license for an animal refuses or fails to comply with this Chapter or any law governing animals, an official notice shall be given of the intention to revoke the license. If, within seven (7) days after office notice is given, evidence shows the offense has not been corrected, the license shall be automatically revoked. Whenever a license is revoked, the owner of the licensed animal shall have the opportunity for hearing if the owner files a written request with the Kayenta Township within seven (7) days of receiving written notice of the receipt of a request for a hearing. If no request for a hearing is received, the revocation or denial becomes final. Any unlicensed animal because of the nonissuance or revocation of a license is subject to the impoundment and disposal procedures of this Chapter.

ARTICLE VI – LIVESTOCK

Section 16-601 Keeping of Livestock

A. All livestock shall be confined to the premises of the owner. Livestock shall be enclosed with adequate fences or barriers that shall be sufficient to prevent the livestock from escaping the enclosure or damaging shrubbery or other property situated on adjacent property.

B. The owner keeping any livestock shall keep all yards, barns, pens, stables, sheds or other enclosures in which such animals are confined in such a manner so as not to give off odors offensive to persons or ordinary sensibilities in the immediate vicinity, or to breed or attract flies, mosquitoes or other noxious insects or rodents, or in any manner to endanger the public health, safety, or welfare, or to create a public nuisance.

Section 16-602 Unlawful for Livestock to Be at Large

It shall be unlawful for any livestock to be at large off the property of the owner of the livestock. The owner of the livestock found to be at large shall be responsible for the offense.

Section 16-603 Liability

To insure the public safety and to avoid serious accidents, any livestock that is in a public roadway or that is in danger of getting on a public roadway will be tranquilized if possible, or, in extreme cases, such as when livestock are injured or become aggressive, destroyed by Animal Control Officers. If it is necessary to tranquilize or destroy livestock to prevent property damage or injuries, the Township will not be liable for damages to the owners of said livestock.

Section 16-604 Dead Livestock

It shall be the duty of the owner of livestock that dies within the Township to immediately remove and dispose of the dead livestock at a site identified by the Township,

which site shall be designated and permitted by Navajo Nation Environmental Protection Agency and to pay all fees associated with disposal. If an owner of the dead livestock neglects or refuses to remove it within twenty four (24) hours after discovery of the dead livestock, the Township shall remove the dead livestock at the expense of the owner. The owner shall be liable for such expenses and the Township may recover the expenses by civil action. Whenever the owner of the dead livestock cannot be found or ascertained, the Township shall remove and dispose of it at the designated site or landfill.

ARTICLE VII – ANIMAL CONTROL FACILITIES

Section 16-701 Permit Required

No person, partnership, corporation, joint venture, agency or organization shall operate an animal shelter, commercial facility, temporary commercial facility or other animal facility or hauling trucks to transfer animals within or from the Township without first obtaining a permit in compliance with this Section. All permits shall expire on December 31 of every year, and all fees shall be prorated for any fraction of the licensing year.

Section 16-702 Safe and Sanitary Condition of Facilities

All facilities covered by this Article VII shall be operated in a safe and sanitary manner and shall meet all health and safety and other standards of the Township and Navajo Nation and comply with all laws of the Township and Navajo Nation at all times. The Township shall inspect such facilities at least once a year.

Section 16-703 Penalty for Violation

The penalty for violation of this Article shall be a fine set pursuant to Section 7-902 and/or revocation of a permit.

ARTICLE VIII – ENFORCEMENT

Section 16-801 Enforcement Duties

A. Animal Control Officers shall be the enforcement officials for this Chapter. These officials shall have the authority to act on behalf of the Township in investigating complaints, impounding animals, disposing of animals, issuing complaints, issuing citations, and taking other lawful actions as required for enforcing the provisions of this Chapter.

Section 16-802 Interference with Animal Control Officer

B. It shall be unlawful for any person to interfere with any Animal Control Officer in

the performance of his duties hereunder.

Section 16-803 Self Defense

Upon attack by an animal or by the owner of the animal, an Animal Control Officer can defend himself, at his discretion, taking such means as he deems necessary in that situation.

Section 16-804 Private Property

For purposes of discharging the duties imposed by this Chapter, and to enforce the same, an Animal Control Officer may enter upon private property to the full extent permitted by law. An Animal Control Officer shall have the right to pursue and apprehend an animal which is at large onto private property without first requesting permission from the owner of the property before entering the property or without obtaining a search warrant, provided such entry does not include a residence or dwelling.

Section 16-805 Entry and Inspection of Animal Related Facilities

A. Whenever it is necessary to make an inspection to enforce any of the provisions of this Chapter or to perform any duty imposed by this Chapter or other applicable law regarding animals or whenever an Animal Control Officer has reasonable cause to believe that there exists in any building, structure or upon any premises any violation of this Chapter or other applicable law, the Animal Control Officer is authorized to enter such property at any reasonable time during business hours and to inspect the same and to perform any duty imposed upon the Animal Control Officer by this Chapter or other applicable law, provided that if such property be occupied, the Animal Control Officer shall first present proper credentials to the occupant and request to enter explaining the reason therefore and obtain permission from said occupant.

B. Notwithstanding the foregoing, if the Officer has reasonable cause to believe that the keeping or the maintaining of any animal is so hazardous, unsafe or dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the Animal Control Officer shall have the right to immediately enter and make such inspection, whether or not permission to inspect has been obtained. If the property is occupied, the Officer shall first present proper credentials to the occupant and demand entry, explaining the reasons therefore and the purpose of inspection.

C. Whenever an Animal Control Officer is denied admission to inspect any premises under this Chapter and the Officer cannot determine whether violations exists on the premises, the Animal Control Officer is authorized to request a warrant for the inspection of the premises from the Kayenta District Court to enter and inspect the premises.

ARTICLE IX – VIOLATIONS AND FEES AND PENALTIES

Section 16-901 Violations

It shall be a violation of the Chapter to:

A. Fail to comply with any provision of this Chapter;

B. Fail to comply with any lawful order of the Kayenta Township Commission, Kayenta Township, or Animal Control Officer, unless such order is lawfully stayed or reversed.

C. Fail to comply with any lawful order of the Hearing Officer or Kayenta District Court.

Section 16-902 Fees, Permits, Fines and Penalties

A. Any person violating this article may be deemed guilty of violating a Township ordinance and may be punished by a fine not to exceed $500.00. Each day of violation shall be deemed a separate offense.

B. The fees, permits, fines and penalties applicable to this Chapter shall be established by the Kayenta Township Commission by resolution, which shall be updated annually or as needed.