



CHAPTER 15

**KAYENTA TOWNSHIP
ALCOHOL AND CONTROLLED SUBSTANCE ORDINANCE**

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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

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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.