



## CHAPTER 12

### KAYENTA TOWNSHIP CIVIL PUBLIC TRESPASS ORDINANCE

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## 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 The Kayenta Township ("Township") comprises an area of 3,606.43 acres, more or less, originally withdrawn by the Navajo Nation Council for the Township by Resolutions nos.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.