

KAYENTA TOWNSHIP COMMISSION
CHAPTER 9, LEASE ORDINANCE

SUBCHAPTER 1. GENERALLY

Section 9001. Title

This chapter shall be known and cited as the "Kayenta Township Commission; Chapter 9, Lease Ordinance."

Section 9002. Policy

It shall be the policy of the Kayenta Township Commission that its leasing system accomplishes the following goals:

- a) To protect land and resources within the Kayenta Township site by zoning and limiting types of land use and impacts;
- b) To protect 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 provide revenue to the Kayenta Township, Navajo Nation, in the form of rents; and
- d) To encourage development within the Kayenta Township site by developing streamlined leasing procedures and providing appropriate incentives and opportunities.

Section 9003. Authority

Pursuant to the Navajo Nation Council resolutions CN-86-85, CJA-3-96, CN-76-96 the authority of the Kayenta Township Commission "...to plan, implement and control activities within the Kayenta Township site..." includes the approval and granting of leases (business, homesite, church site, industrial site), permits, licenses, Right-of-Way (ROW) and easements.

The Kayenta Township Commission is further authorized to adopt such ordinances, rules and regulations as it deems necessary to govern the leasing, permits and licenses for the use of land within the exterior boundaries of the Kayenta Township site.

Section 9004. Definitions

"Kayenta Township Commission" means the governing body of the Kayenta Township site as established by the Navajo Nation Council by resolutions CJA-3-96 and CN-76-96.

"Secretary" means the Secretary of the Interior or his authorized representative acting under delegated authority.

“Kayenta Township site” means the 3,606.42 acres of Navajo trust land withdrawn for development and designated by the Navajo Nation Council by CN-86-85.

“Lessor” means the Navajo Nation Kayenta Township Commission, Navajo Nation, in its capacity as the owner of Navajo Nation trust lands (including unrestricted lands).

“Trust Property” means any property held by the United States in trust for the Navajo Nation, including rights-of-way.

Section 9005. Applicability

This ordinance applies to new leases, permits, licenses, ROW and easements executed on or after October 16, 1998 within the Kayenta Township site. This will also apply to existing leases where a current lessee wishes to renegotiate a lease, provided that there are no past due rental, debt or unpaid taxes on the lease.

All new leases involving surface occupancy of land within the Kayenta Township site entered into between the Kayenta Township Commission, Navajo Nation, and any lessee after adoption of this ordinance will be governed by the provisions enumerated herein. This includes leases between the Kayenta Township Commission, Navajo Nation, and individual members of the Navajo Tribe; entities registered with the Navajo Commerce Department or its successor; partnerships or joint ventures between Navajo and non-Navajo entities; and other outside legal entities.

This ordinance will govern new leases on previously withdrawn or leased land, including but not limited to industrial parks, shopping centers, trading post sites and other commercial leases.

Section 9006. 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 final judgment of the Navajo Tribal Court, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9007. Effective Date

This ordinance shall take effect upon approval by the Kayenta Township Commission. All business leases, licenses and permits and related transactions granting land use of tribal land entered into prior to the effective date of this ordinance shall remain in effect until such land use right expires at which time this ordinance becomes effective.

Section 9008. Lease Application

A developer proposing for the leasing of land within the Kayenta Township site on the Navajo Reservation shall submit an application for a lease with a development plan, a business plan, and/or financial plan, as specified by the Kayenta Township Commission.

SUBCHAPTER 2. BUSINESS LEASES

Section 9101. Approval of Leases

Approval of business site leases of lands within the Kayenta Township site will include the following:

- 1) The Kayenta Township Commission will approve the cover resolution approving the negotiated Lease Document.
- 2) The President of the Navajo Nation will sign to the Lease Document on behalf of the Kayenta Township Commission, Navajo Nation, as lessor.
- 3) The Area Director of the Bureau of Indian Affairs, or his designee, will sign to the Lease Document on behalf of the Secretary of Interior as the trustee.

Section 9102. Applicability

These procedures apply to new leases executed on or after October 16, 1998. This will also apply to existing leases where current lessee wishes to renegotiate a lease, provided that there are no past due rental, debt or unpaid taxes on the lease.

These procedures are intended to apply to all leases and permits involving surface occupancy of Navajo lands within the Kayenta Township site for business purposes including leases for shopping centers, industrial parks, rights-of-way and easements (except for energy/mineral related projects) as well as smaller commercial retail ventures. Several types of leases may be developed pursuant to this ordinance, including revocable use permits, property management agreements, improved property leases and development leases.

Section 9103. Lease Document

Standard lease document forms developed by the Navajo Nation Department of Justice for business site leases of trust lands on the Navajo Nation to comply with federal and Navajo Nation requirements will be used for Kayenta Township site business leases. The two forms are:

- 1) "FORM: Non-UST Business Site Lease, Revised March 09, 1998;" or
- 2) "FORM: UST Business Site Lease, Revised March 09, 1998."

Section 9104. Definitions

"Business Purpose" means the lawful conduct of commercial or industrial enterprise activity for gain or livelihood.

"Good Cause" means a showing by substantial evidence that harm to the lessee's business would result from failure to allow a waiver of a waivable provision of these regulations, and that granting such a waiver would be likely to prevent such harm.

“Navajo-Owned Entity” means any partnership, corporation, joint venture or other enterprise in which enrolled members of the Navajo Tribe control more than 51% of the financial interest and participate actively in management.

“Encumber the Leasehold Interest” means to borrow money using the lessee’s interest in the lease as collateral.

“Development Period” means an authorized length of time commencing with the approval of a business site lease during which rental payments by the lessee and insurance and bonding requirements may be waived to enable the applicant to use the savings as additional capital for startup or development.

“Improvements” means a valuable addition made to property or an amelioration in its condition, amounting to more than mere repairs or replacement, costing labor or capital, and intended to enhance its value, beauty or utility or to adapt it for new or further purposes.

Section 9105. Business Lease Provisions

1) Duration of Leases

(a) It is the policy of the Kayenta Township, Navajo Nation, that leases granted or approved shall be limited to the minimum duration, commensurate with the purpose of the lease that will allow the lease applicant to recover his proposed investment except as provided in paragraph (b) of this section.

(b) Lease may be granted for a term up to 99 years or less. The regulations shall set forth standards to be applied in determining the length of a lease.

2) Rental

(a) Rental negotiated will be for a flat amount.

(b) Rental may be negotiated using appropriate appraisal and valuation methods in the best interest of the Kayenta Township Navajo Nation.

(c) Rental payments may be waived in accordance with the regulations during any authorized development period for the purposes of utilizing said deferred rental payments as additional capital for start-up or acceleration of development.

(d) Rental payments, delinquent rental or other charges owed in connection with business site leases may be waived only upon a showing of good cause as defined in the regulations.

3) Insurance and Bonding Requirements; Waiver

(a) The Kayenta Township, Navajo Nation, may require insurance be provided by the lessee in an amount adequate to protect any improvements on the leased premises; the lessee may also be required to furnish appropriate liability insurance, and such other

insurance as may be necessary to protect the Kayenta Township's, Navajo Nation's interest.

(b) Unless otherwise provided by regulation a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond shall not be in an amount less than one year's rental.

(c) Insurance and bonding requirements may be waived on an undeveloped lease during any authorized development period until development begins.

4) Ownership of Leasehold Improvements; Encumbrance; Transfer.

(a) Improvements placed on the leased premises shall become and remain the property of the Kayenta Township Commission, Navajo Nation, except under conditions provided for in the regulation. The lease shall specify the maximum time allowed for removal of any improvements.

(b) The lease may contain provisions authorizing the lessee to encumber his leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises.

(c) The lessee shall have the right to transfer, assign or sell all equity and rights in the improvements and leasehold without the permission of the Kayenta Township, Navajo Nation, where such transfer, assignment, or sale is made to a Navajo individual or Navajo-owned entity.

(d) Any recipient, assignee, or beneficiary of any transfer, assignment, sale, or foreclosure or sale under an encumbrance, must notify the Kayenta Township, Navajo Nation, within (30) days of such transaction and agree in writing to be bound by the terms and conditions of the original lease.

(e) In the event the Kayenta Township, Navajo Nation, does not renew any lease the Kayenta Township, Navajo Nation, shall compensate the lessee for leasehold improvements at fair market value or unless otherwise provided under the terms of the lease.

(f) Leases entered into by the Kayenta Township, Navajo Nation, shall include a provision that the Navajo Nation shall not be required to pay for compensation of lessee's improvements in the event of default or who otherwise fails to pay rent to the Kayenta Township, Navajo Nation.

(g) Improvements that are determined by the Secretary to be trust property are not subject to this section.

5) Subleasing

A sublease of any lease may be made only with the written approval of the Kayenta Township Commission, and Navajo Nation, and of all parties to such lease including the surety or sureties.

6) Development Period

(a) A development period may be authorized during which rental payments and insurance and bonding requirements may be waived as determined by regulation.

(b) If the lessee undertakes no development within the development period, at the discretion of the Kayenta Township Commission, Navajo Nation, the lease shall automatically terminate at the expiration of the development period or the Kayenta Township Commission may begin to assess annual rental.

7) Termination of Leases

Leases and all rights and privileges thereunder may be terminated in one of the following ways:

(a) On Expiration: Upon expiration of the original term or any renewal or extension.

(b) For Cause: Leases may be terminated for any of the following causes:

1. Default or breach of any of its terms;
2. Revocation of Lessee's license or permit to engage in business or to trade; and
3. Violation of any ordinances, laws or regulations of the Kayenta Township, Navajo Nation or United States relating to business site leases.

8) Disposition of Possessory Right

(a) In event of termination of the lease, the disposition of possessory rights shall be as follows:

1. On Expiration of Lease: In event of termination of the lease upon expiration of its term or any extension thereof, lessee may prior thereto transfer and assign his possessory interest to a purchaser in accordance with S.9105, (4), (c) of this chapter.
2. For Cause: In event of termination of the lease for cause, lessee may sell, transfer, and assign his possessory rights to a purchaser to be approved by the Kayenta Township Commission, Navajo Nation, subject to such terms and conditions as the Kayenta Township Commission may provide.

(b) The Kayenta Township, Navajo Nation, shall have the option to purchase the possessory rights proposed to be assigned or transferred by the lessee to a non-Navajo individual or non-Navajo entity third party at a price equal to the bona fide offer of such third party upon such terms and conditions as the Kayenta Township Commission may approve.

9) Environmental Assessment Required for UST Leases

Applicants for a Business Site Lease proposing a business(es) utilizing or purveying hazardous materials in the course of the business activity are required to provide an environmental assessment report as a part of their business planning, in the event that a spill and/or contamination occurs to insure that the proprietor has plans for mitigation of such spill and/or contamination in the future.

Section 9106. Procedures

The Kayenta Township Commission will develop procedures for the initiation, development, negotiation, and cover resolution approval of a business site lease for lands within the Kayenta Township site.