

CHAPTER I - GENERAL PROVISIONS

12A-101 **TITLE**

This Ordinance shall be known and may be cited as the Zoning Ordinance or Zoning Regulations of the Town of Kiawah Island, South Carolina ("Zoning Ordinance").

12A-102 **AUTHORITY AND PURPOSES**

This Ordinance is adopted pursuant to the authority conferred by the Code of Laws of South Carolina, Title 6, Chapter 29, the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, and drafted in accordance with an adopted Comprehensive Plan. The purposes of these Zoning Regulations are to protect the health, safety, and general welfare of current and future residents of the Town of Kiawah Island by:

1. Implementing the vision and goals of the Town of Kiawah Island Comprehensive Plan;
2. Providing for adequate light, air and open space;
3. Establishing density of land, avoiding undue concentration of population, and lessening congestion in the streets;
4. Protecting and preserving scenic, historic, or ecologically sensitive areas;
5. Implementing land use policies that will preserve the natural character of the Town of Kiawah Island, regulating the density and distributions of populations and the uses of buildings, structures and land for trade, industry, residence, recreation, forestry, conservation, water supply, sanitation, protection against floods, public activities, and other purposes;
6. Facilitating the adequate provision or availability of transportation, police and fire protection, water, sewage, schools, parks and other recreational facilities, affordable housing, disaster evacuation, and other public services and requirements;
7. Promoting desirable living;
8. Protecting property against blight;
9. Conserving the value of land and buildings;

10. Securing safety from fire, flood, and other damages; and
11. Furthering the public welfare in any other regard specified by Town Council.

12A-103 APPLICABILITY

The provisions of these Zoning Regulations shall apply to all land, property and development in the Town of Kiawah Island, except as expressly provided to the contrary in these Zoning Regulations or except as expressly provided in duly approved development agreements. No development shall be undertaken without prior authorization from the appropriate designated Town official or body pursuant to these Zoning Regulations.

12A-104 TOWN COUNCIL

The Town Council may, from time to time:

1. Amend the number, shape, boundary or area of any zoning district;
2. Amend any regulation pertaining to any zoning district;
3. Amend any section of these Zoning Regulations;
4. Amend the Zoning Map; or
5. Approve the issuance of emergency permits.

12A-105 PLANNING COMMISSION

1. Creation.

The Town of Kiawah Island Planning Commission is hereby created as authorized by Chapter 29, Article 1, Sections 6-29-310 through 6-29-380 of the South Carolina Code.

2. Composition; Appointment and Term of Office of Members.
 - A. The Planning Commission shall consist of seven (7) members to be appointed by the Mayor with the consent of the Town Council. At least five (5) of the members shall be residents of the Town of Kiawah Island. A resident member shall mean a person who resides permanently in the Town of Kiawah Island for not less that eight (8) months of each calendar

year and is registered to vote on Kiawah Island. Of the seven (7) members, the Planning Commission may consist of as many as two (2) members who own property in the Town of Kiawah Island but are not “residents.” All members are expected to attend eighty (80%) percent of the scheduled and held meetings each calendar year. The term of office shall be for four (4) years. Any vacancy shall be filled for the unexpired term by an individual appointed by the Mayor with the consent of the Council. A Chairperson and a Vice Chairperson shall be elected and a Secretary shall be appointed at the first meeting of each year. All members shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties, provided Council has approved such expenditures.

- B. No member shall hold an elected public office in the Town of Kiawah Island or Charleston County.
- C. Members shall represent a broad cross section of the interests and concerns within the Town of Kiawah Island.

3. Organization and Procedural Rules Governing the Planning Commission.

- A. The Planning Commission shall organize itself electing one of its members as chairperson and one as vice-chairperson whose terms are for one year. The Planning Commission shall appoint a secretary who may be an officer or an employee of the Town or of the Planning Commission. The Planning Commission shall meet at the call of the chairperson and at such times the chairperson or Planning Commission may determine.
- B. The Planning Commission shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The Planning Commission may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated by Town Council.

4. Functions and Powers.

- A. The Planning Commission shall have the functions and powers set forth in Code of Laws of South Carolina, Title 6, Chapter 29, Section 6-29-340 of the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as amended. In the discharge of its responsibilities, the Planning Commission has the power and duty to:
 - (1) Prepare and revise the Comprehensive Plan and programs for the development and redevelopment for the Town of Kiawah Island;

- (2) Prepare and recommend for adoption to Town Council the following to implement plans and programs within the Town:
 - (a) A zoning ordinance that includes zoning district maps and appropriate revisions thereof;
 - (b) Regulations for the subdivision or development of land and appropriate revisions thereof, and to oversee the administration of the regulations that are adopted by Town Council;
 - (c) An official map and appropriate revision of it showing the exact location of existing or proposed public streets, highways, and utility rights-of-way, and public building sites; regulations to control the erection of buildings or other structures; changes in land use within rights-of-way, building sites, or open spaces within the Town or specified areas within the Town;
 - (d) A landscaping ordinance setting forth required planting, tree preservation, and other aesthetic considerations for land and structures;
 - (e) A capital improvements program setting forth projects required to implement plans which have been prepared and adopted, including an annual listing of priority projects for consideration by the Town Council or other governmental bodies responsible for implementation prior to preparation of their capital budget; and
 - (f) Policies or procedures to facilitate implementation of planning elements.
- (3) Hear appeals of administrative decisions (by Staff) related to subdivision regulations (SC Code Section 6-29-1150(C)).
 - (a) Staff action, if authorized, to approve or disapprove a land development plan may be appealed to the Planning Commission by a party in interest.
 - (b) The Planning Commission shall act on the Appeal within sixty (60) days and the action of the Planning Commission is final.

- (c) An appeal from the decision of the Planning Commission may be taken to circuit court within thirty (30) days after actual notice of the decision.
- (4) Approve street names (SC Code Section 6-29-1200).
- (a) The Planning Commission shall, by proper certificate, approve and authorize the name of a street or road laid out within the territory over which the Commission has jurisdiction. It is unlawful for a person in laying out a new street or road to name the street or road on a plat, by a marking or in a deed or instrument without first getting the approval of the Planning Commission. Any person violating this provision is guilty of a misdemeanor and, upon conviction must be punished in the discretion of the court.
 - (b) The Planning Commission may, after reasonable notice through a newspaper having general circulation in which the Commission is created and exists, change the name of a street or road within the boundary of its territorial jurisdiction:
 - (i) When there is duplication of names or other conditions which tend to confuse the traveling public or the delivery of mail, orders, or messages;
 - (ii) When it is found that a change may simplify marking or giving of directions to persons seeking to locate addresses; or
 - (iii) Upon any other good and just reason that may appear to the Commission.
 - (c) On the name being changed, after reasonable opportunity for a public hearing, the Planning Commission shall issue its certificate designating the change, which must be recorded in the Office of the Register of Mesne Conveyances or Clerk of Court, and the name changed and certified is the legal name of the street or road.

12A-106 BOARD OF ZONING APPEALS

1. Creation.

The Town of Kiawah Island Board of Zoning Appeals ("Board") has been created and is authorized to act pursuant to Chapter 29, Article 5, Sections 6-29-780 through 6-29-860 of the South Carolina Code.

2. Composition and Appointment of Term of Office of Members.

A. The Board of Zoning Appeals shall consist of seven (7) members to be appointed by the Mayor with the consent of the Town Council. At least five (5) of the members shall be residents of the Town of Kiawah Island. A resident member shall mean a person who resides permanently in the Town of Kiawah Island for not less than eight (8) months of each calendar year and is registered to vote on Kiawah Island. Of the seven (7) members, the Board of Zoning Appeals may consist of as many as two (2) members who own property in the Town of Kiawah Island but are not "residents." All members are expected to attend at least eighty (80%) percent of the scheduled and held meetings each calendar year. The term of office shall be for three years. Any vacancy shall be filled for the unexpired term by an individual appointed by the Mayor with the consent of the Council. A Chairperson and a Vice Chairperson shall be elected and a Secretary shall be appointed at the first meeting of each year. All members shall serve without compensation, but may be reimbursed for actual expenses incurred in connection with their official duties, provided Council has approved such expenditures.

B. No member shall hold an elected public office in the Town of Kiawah Island or Charleston County.

C. Members shall represent a broad cross section of the interests and concerns within the Town of Kiawah Island.

3. Organizational and Procedural Rules Governing the Board of Zoning Appeals.

The Board of Zoning Appeals has adopted the following rules and regulations:

A. Administrative Office.

The Office of the Board of Zoning Appeals shall be located in the Town Hall Office, and the meetings of the Board shall be held in the adjacent conference room unless otherwise designated by the Chairperson. All notices of appeal and other papers to be filed with the Board are to be filed with the Planning Director of the Kiawah Island Planning Department not

less than thirty (30) working days prior to the Board meeting at which the matter will be heard. The Planning Director shall prepare the documentation of the variance requested and the associated exhibits and forward these to the Board members no fewer than ten (10) working days prior to the next Board meeting.

B. Officers.

The Board of Zoning Appeals shall elect one of its members as chairperson and one as vice-chairperson whose terms are for one year. The Planning Director shall serve as Secretary of the Board. Meetings of the Board shall be at the call of the chairperson and at such other times as the Board may determine. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

C. Rules of Procedures and Records.

The Board of Zoning Appeals shall adopt rules of organizational procedure and shall keep a record of its resolutions, findings, and determinations, which record must be a public record. The Board of Zoning Appeals may purchase equipment and supplies and may employ or contract for such staff and such experts as it considers necessary and consistent with funds appropriated by Town Council.

4. Functions and Powers.

The Board of Zoning Appeals shall have the following powers, pursuant to Section 6-29-800 of the South Carolina Code:

A. Administrative Review.

To hear and decide appeals, subject to the procedure and standards set forth in these Zoning Regulations, when it is alleged by the appellant that any administrative official has made an error in any order, requirement, decision, or determination. This requirement shall not apply to advisory or recommendatory actions of any such administrative official or agency.

B. Variances.

To hear and decide applications for variance from the requirements of these Zoning Regulations, subject to the procedure and standards set forth in Section 12A-509.

C. Special Exceptions.

To permit uses by special exception subject to the terms and conditions for those uses as identified in these Zoning Regulations (Section 12A-507).

D. Filing of Appeals to the Board of Zoning Appeals.

- (1) Appeals from the acts of officials pursuant to the authority granted by these Zoning Regulations shall be taken to the Board of Zoning Appeals by any person aggrieved or by any officer, department, board or bureau of the Town, as well as by any person having a substantial interest in any decision of an administrative officer to enforce the Zoning Regulations. An appeal shall be evidenced by filing with the Planning Director within five (5) working days of the action appealed from, a written notice of appeal specifying the grounds thereof and the modifications being sought.
- (2) All appeals, applications and matters brought before the Board of Zoning Appeals shall be heard in the order of filing at the regular meeting of the Board of Zoning Appeal; provided, however, that the Board of Zoning Appeals shall set its meeting agenda and determine the number of applications it will hear. The Chairperson may call a special meeting of the Board of Zoning Appeals.
- (3) Appeals to consider any such appeal, application or matter. In the event that such a special meeting is called, the Chairperson, at his/her discretion, shall give notice to interested parties that any or all pending matters before the Board of Zoning Appeals will be heard and considered at such special meeting.
- (4) Published notice for appeals shall be provided in accordance the Notice Provisions of this Ordinance.

E. Effect of Appeal.

An appeal to the Board of Zoning Appeals stays all proceedings in furtherance of the action appealed. An exception is when the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him that by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Zoning Appeals or by a court of record on application, and notice to the officer from whom the appeal is taken, and on due cause shown.

F. Hearing on Appeal.

- (1) Hearings on appeals shall be completed within sixty (60) calendar days of the appeal, however, failure to render a decision on an appeal within such time period shall not be deemed an approval of such appeal. At the hearing of an appeal, the parties thereto may offer affidavits, testimony, or other evidence in support of their claims; and the Board, on its own motion, may call before it other witnesses. All persons giving any testimony or evidence whatsoever at a Board of Zoning Appeals meeting must be sworn in. To save time, the oath will be recited as a group prior to the review of cases to be presented. However, anyone not present or not participating in the group swearing in will be required to be separately sworn in prior to giving evidence or testimony.
- (2) At the hearing and consideration of appeals, reasonable time and opportunity shall be allowed to interested parties to introduce testimony and other evidence. Hearings may be continued from time to time by the Board of Zoning Appeals, in its discretion, upon good cause shown. Oral arguments before the Board of Zoning Appeals shall not exceed fifteen (15) minutes to a side, unless upon application before the commencement of arguments, the time shall be enlarged by the Board of Zoning Appeals.
- (3) Parties filing appeals may, after the application has been advertised as part of a meeting's agenda, request the application be deferred. A request for deferral must be in writing, signed by the applicant or agent, set forth the reason for requesting deferral, and set a forthcoming meeting date for the matter to be heard. Without an extraordinary and compelling reason, only one deferral will be permitted. Applicants filing petitions for re-hearings where the Board of Zoning Appeals is being asked to reconsider a decision, order, requirement or determination shall not be permitted to request deferrals. Cases presented before the Board of Zoning Appeals may be deferred for a period of time specified by the Board of Zoning Appeals, provided that this time does not exceed a period of thirty (30) working days.
- (4) In passing upon an appeal, the Board of Zoning Appeals shall not consider prospective financial loss or gain to the appellant, nor shall the Board of Zoning Appeals, by variance, permit to be established or carried on in any district an activity, business, or operation which is not otherwise allowed in such district by a specific provision of the Zoning Regulations.

G. Order of the Board of Zoning Appeals.

- (1) The Board of Zoning Appeals shall decide each appeal within sixty (60) calendar days. In exercising its powers relating to appeals, the Board of Zoning Appeals may, in conformity with the provisions of these Zoning Regulations, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made within the spirit and intent of these Zoning Regulations.
- (2) When it shall appear to the Secretary of the Board of Zoning Appeals that an appeal presents substantially the same grounds which have been decided by the Board of Zoning Appeals within the previous one (1) year, the Secretary shall notify the Board of Zoning Appeals thereof, but shall not advertise the appeal or give notice to interested parties until the Board of Zoning Appeals shall determine that an amendment of this Article or other changed conditions requires reopening the issue.

H. Minutes of the Board of Zoning Appeals.

The decisions of the Board of Zoning Appeals shall be in writing and signed by the Chairperson. The minutes of the Board of Zoning Appeals shall show the vote of each member upon each question, or if a member is absent or fails to vote, the minutes shall indicate such fact. The decisions of the Board of Zoning Appeals shall be filed in the offices of the Board of Zoning Appeals and the Planning Director. True copies thereof shall be sent by registered mail to each of the interested parties, and shall show the date of the filing and of the decision. These decisions shall be a public record.

I. Appeals from Board of Zoning Appeals Decisions.

Any person who may have a substantial interest in any decision of the Board of Zoning Appeals or any officer, board, or bureau of the Town may appeal from any decision of the Board of Zoning Appeals to the Circuit Court in and for the County by filing with the Clerk of such court a petition in writing setting forth plainly, fully and distinctly wherein such decision is contrary to law. Such appeal shall be filed within thirty (30) calendar days after the decision of the Board of Zoning Appeals is rendered.

12A-107 PLANNING DIRECTOR

The Planning Director shall serve as the Zoning Enforcement Officer and shall administer and enforce these Zoning Regulations. In furtherance of such authority, the Director or the Director's designee shall:

1. Receive and examine applications for zoning permits and certificates of occupancy;
2. Approve and issue zoning permits that meet the provisions of Article 12;
3. Keep a record of all applications for zoning permits, including all plats and plans submitted therewith, which record shall be open to public inspection during business hours;
4. Conduct inspections of structures, land, and the uses thereof to determine compliance with these Zoning Regulations;
5. Serve as Secretary of the Board of Zoning Appeals;
6. Receive, file, and forward to the Board of Zoning Appeals the records of all requests for appeals, variances and special exceptions;
7. Review, approve, and issue administrative permits as authorized by these Zoning Regulations and maintain records of such permits;
8. Receive, examine and process all applications for amendments to this Zoning Ordinance (Article 12) including, but not limited to, requests for code text amendments, zoning district amendments, planned developments, and development agreements;
9. Receive, examine and process all applications for amendments to the Comprehensive Plan;
10. Maintain permanent and current records of these Zoning Regulations including, but not limited to, all zoning maps, amendments, conditional uses, special exceptions, variances, appeals, and applications thereof and records of hearings thereon. Such records shall be open to the public for inspection during business hours;
11. Maintain for sale or free distribution to the public a supply of copies of the zoning map or maps, the compiled text of the Zoning Regulations (but not necessarily including amendments establishing or modifying specific planned development amendments), and the rules of the Board of Zoning Appeals;

12. Provide such clerical, technical, and consultative assistance as may be required by the Board of Zoning Appeals, Planning Commission and other Town boards, commissions and officials in the exercise of their duties relating to these Zoning Regulations;
13. Conduct studies requested by Planning Commission related to the Comprehensive Plan, zoning, and other related matters.

12A-108 **CONSISTENCY WITH COMPREHENSIVE PLAN**

1. These Zoning Regulations and the Zoning Map adopted herewith are intended to implement the visions and goals of the Town of Kiawah Island Comprehensive Plan and are hereby deemed to be consistent with and in accordance with the adopted Comprehensive Plan. Any amendments to these Zoning Regulations and all applications for a change to the Zoning Map shall be consistent with the intent of Comprehensive Plan.
2. An amendment to the text of the Zoning Regulations is consistent and in accordance with the Comprehensive Plan if it complies with the visions and goals stated in the Comprehensive Plan. An amendment to the Zoning Map is consistent with the intent of Comprehensive Plan if the map amendment is consistent with the Land Use Diagram contained in the Comprehensive Plan.

12A-109 **COORDINATION WITH OTHER REGULATIONS**

1. It is the intent of the Town of Kiawah Island that these Zoning Regulations be applied in a manner consistent with other regulations governing the use and development of land including, but not limited to, the Subdivision Regulations, the Road Code, floodplain regulations and other applicable Town, State and Federal regulations. Applications for permits required by other development regulations may be submitted simultaneously with applications for permits required by the Zoning Regulations.
2. The use of buildings and land within the Town shall be subject to all other applicable provisions of the Town of Kiawah Island Municipal Code in addition to these Zoning Regulations, whether or not such other provisions of the Code are specifically cross-referenced in these Zoning Regulations.
3. These Zoning Regulations shall be construed to be the minimum requirements necessary for the promotion of public health, safety or general welfare. Whenever these Zoning Regulations impose a more restrictive standard than required by any other statute or regulation, these Zoning Regulations shall govern.

12A-110 **RELATIONSHIP TO PRIVATE RESTRICTIONS**

1. The provisions of these Zoning Regulations are not intended to abrogate any deed restriction, covenant, easement or any other private agreement or restriction on the use of land. Provided, that where the provisions of these Zoning Regulations are more restrictive or impose higher standards than any such private restriction, the requirements of these Zoning Regulations shall control. Where the provisions of any private restriction are more restrictive or impose higher standards than these Zoning Regulations, such private restrictions shall control if properly enforced by a person having the legal right to enforce such restrictions.
2. Private restrictions shall not be enforced by the Town.

12A-111 **DEVELOPMENT UNDER PRIOR REGULATIONS**

1. All applications for a rezoning, which have not been acted on by the Planning Commission by the effective date of these Zoning Regulations, shall be submitted or resubmitted, reviewed and evaluated pursuant to these Zoning Regulations and the Comprehensive Plan.
2. All other development applications which are filed after the effective date of these Zoning Regulations shall be processed, reviewed and evaluated in accordance with these Zoning Regulations.
3. Except for rezoning applications, development applications which have been duly filed and which are pending on the effective date of these Zoning Regulations shall be decided on the basis of the Zoning Regulations in effect immediately prior to such effective date. Nothing contained in these regulations shall require any change in plans, construction or designated use of a building structure or parcel with a valid permit actually under construction on the effective date of these Zoning Regulations, provided any such structure is completed within one (1) year from such effective date.
4. Where structures are not complete within one (1) year from the effective date of this ordinance, the new zoning ordinance regulation will apply.

12A-112 **APPLICATION FEES**

Fees will be levied in order to defray expenditures associated with application processing. The fees are due with submission of an application. Fees shall be determined by the Town Council.

12A-113 IMPACT FEES

Purpose and Intent:

The purpose of an impact fee is to:

- 1. Assure wise appropriate, compatible and timely development of new areas by providing necessary capital facilities in accordance with existing and future needs;
- 2. Promote desirable living conditions and sustained stability of the Town by ensuring adequate infrastructure and service delivery; and
- 3. Secure economy in government expenditures by assuring that new development pay its fair and equitable share of additional capital facility costs required by increased services demand generated by new growth.

Impact Fees shall be levied in accordance with this Ordinance at such time as an impact assessment study has been completed. This impact assessment study shall determine the impact fee amount based upon either the gross floor area of nonresidential development or the number of dwelling units of residential development for the purpose of financing public facilities necessary to accommodate new development as may be determined by the Town Council. Impact fees shall be payable at the time of building permit issuance.

12A-114 ENFORCEMENT/PENALTY

- 1. The provisions of these Zoning Regulations shall be administered and enforced by the Planning Director.
- 2. Any violation of these Zoning Regulations shall be subject to enforcement and punishment as prescribed in the South Carolina Code.

12A-115 EFFECT OF ORDINANCE ON PRESERVING RIGHTS IN PENDING LITIGATION AND VIOLATIONS UNDER EXISTING ORDINANCES

By the passage of these Zoning Regulations no presently illegal or non-conforming use, building or structure shall be deemed to have been legalized. It is further the intent and purpose of these Zoning Regulations that offenses committed, and liability, penalty or forfeiture, either civil or criminal, incurred prior to the time the existing Zoning Ordinance is repealed and replaced by these Zoning Regulations are not affected by such repeal. Prosecutions and suits for such offenses, liabilities, penalties or forfeitures may be instituted and current suits presently pending may proceed with in all respects as if such prior Zoning Ordinance had not been repealed and replaced by these Zoning Regulations.

12A-116 **EFFECT OF ZONING REGULATIONS ON DEVELOPMENT AGREEMENTS**

Whenever a development agreement duly entered into pursuant to the South Carolina Local Government Development Agreement Act contains standards for the approval, construction, timing, density, intensity, bulk, height, provision of public facilities, design, and/or other standards relating to development, that are different from or inconsistent with the applicable standards as set forth herein, the standards set forth in this Code and the standards set forth in the development agreement shall, to the extent possible, be construed *in para materia* to give effect to both the Code and development agreement; provided, however, that in the event of a conflict, and subject to the provisions of SC Code Section 6-31-80, the standards set forth in the development agreement shall govern. In the event of a dispute between the parties to a duly approved development agreement as to whether a provision in the Comprehensive Plan or Zoning Code is inconsistent with express or implied substantive provisions of such development agreement, the parties must first submit such disputed interpretation to Town Council and must wait seven days after such submittal before invoking the remedies afforded them under the development agreement.

12A-117 **SEPARABILITY**

Should any section, subsection, paragraph, sentence, clause, or phrase of these Zoning Regulations be declared unconstitutional or invalid for any reason, the unconstitutional provision may be removed from these Zoning Regulations and such decision shall not affect the validity of the remaining portions of these Zoning Regulations.

12A-118 **EFFECTIVE DATE**

These regulations shall take effect and be in force from and after the date of their adoption by ordinance of the Town Council.