

## **Mayor**

John D. Labriola

**Council Members** 

Maryanne Connelly John Moffitt Scott M. Parker, MD F. Daniel Prickett

Town Administrator
Stephanie Monroe Tillerson

## TOWN COUNCIL MEETING

Municipal Center Council Chambers November 2, 2021; 2:00 PM

### **AGENDA**

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- II. Pledge of Allegiance
- III. Roll Call:
- IV. Approval of Minutes:
  - A. Minutes of the Town Council Meeting of October 12, 2021

[Tab 1]

- V. Mayor's Update:
- VI. Citizens' Comments (Agenda Items Only):
- VII. Presentation:
  - A. Fiscal Year 2020/2021 Audit Presentation Mauldin Jenkins

## VIII. Consent:

- A. To Consider Approval of the Contract with Kucera International for Aerial Photography and Lidar [Tab 2]
- B. To Consider Approval of the Proposal for Municipal Center Landscape Installation [Tab 3]
- C. To Consider Approval of the Proposal for Landscape Maintenance [Tab 4]

### IX. New Business:

- A. To Consider Approval of *Ordinance* 2021-14 An Ordinance to Amend Article 4, Finance and Taxation, Chapter 3, Municipal Business Licenses– *First Reading* [Tab 5]
- B. To Consider Approval of Ordinance 2021-15 An Ordinance to Amend Article 9 Building and Building Codes, Chapter 4 Permits, License and Fees, Division 2 Licenses, Section 9-201. Licenses First Reading
- C. To Consider Approval of Ordinance 2021-16 An Ordinance to Amend Article 14 General Regulations, Chapter 5 Rental Applications and Regulations, Section 14-504 Rental Business License, Section 14-505 Short-Term Rental Property Caps, Section 14-509 Revocation or Suspension of a Short-Term Rental Business License, Section 14-510 Appeals to Town Council First Reading [Tab 7]
- D. Discussion of Amending the Noise Ordinance

### X. Executive Session:

- A. Executive Session to Receive Legal Advice
- XI. Town Administrator's Report:
- XII. Council Member:
  - a. Committee Updates
  - b. General Comments
- XIII. Citizens' Comments:
- XIV. Adjournment:

**FOIA:** Notice of this meeting has been published and posted in accordance with the Freedom of Information Act and the requirements of the Town of Kiawah Island.



## TOWN COUNCIL Agenda Item

## TOWN COUNCIL MEETING

## Municipal Center Council Chambers October 12, 2021; 2:00 PM

### **MINUTES**

- I. Call to Order: Mayor Labriola called the meeting to order at 2:00 pm.
- II. Pledge of Allegiance
- III. Roll Call:

**Present at meeting:** John D. Labriola, *Mayor* 

Dan Prickett, Mayor Pro Tem

Maryanne Connelly, Councilmember Dr. Scott Parker, Councilmember John Moffitt, Councilmember

**Also Present:** Stephanie Tillerson, Town Administrator

Joe Wilson, Town Attorney Petra Reynolds, Town Clerk

Brian Gottshalk, Public Works Manager

### IV. Approval of Minutes:

A. Minutes of the Town Council Meeting of September 7, 2021

Dr. Parker made a motion to approve the minutes of the September 7, 2021 Town Council Meeting. Councilmember Connelly seconded the motion.

Dr. Parker noted two minor grammatical errors in the minutes.

The minutes were unanimously approved as amended.

## V. Mayor's Update:

Mayor Labriola provided an update on the annexation item discussed at the September Council meeting. He stated the applicant would be changing their request annexation and had submitted a request to the County to subdivide the 82-acre site with the new survey identifying just the commercial site. He noted that a new annexation request had not been submitted to the Town by the applicant. Once received, the new annexation request will be sent out to the community at large.

## VI. Citizens' Comments (Agenda Items Only):

## Doug Benham - 119 Ocean Course Drive

Mr. Benham indicated that he wanted to discuss the proposed changes in the Town's noise ordinance. He questioned why changes were being considered to an ordinance amended less than eighteen months ago, which unambiguously defined as illegal amplified music which could be heard off your property. He went over his concerns and hoped that the discussion would provide transparency on the reasons for revisiting and non-enforcement of the ordinance. Also he was concerned that the proposed revisions provided residents significantly less protection against noise pollution compared to similar ordinances in other communities.. Mr. Benham encouraged Council to reject the proposed draft and institute a meaningful noise ordinance that achieves a quality of life that Kiawah residents deserve.

### VII. Consent Business:

- **A.** To Consider Approval of *Ordinance 2021-11* An Ordinance to Amend Article 9 Building and Building Codes, Chapter 1 General, Division 2 Construction Documents, Section 9-18. Submittal Documents and Chapter 4 Permits, License, and Fees, Division 2 Licenses, Section 9-201. Licenses, And Section 9-202. Definitions *Second and Final Reading*
- **B.** To Consider Approval of *Ordinance* 2021-12 An Ordinance to Amend Article 15 Burning of Combustible Materials, Chapter 1 Offenses Against Property, Section 15-105. Burning of Combustible Materials– **Second and Final Reading**

Mayor Labriola stated that the two consent items were carried over from the September 7<sup>th</sup> meeting.

Councilmember Connelly made a motion to approve the second and final reading of Ordinance 2021-11 and Ordinance 2021-12. Dr. Parker seconded the motion, and it was unanimously approved.

### VIII. New Business:

**A.** To Consider Approval of Support to the new Sea Islands MUSC Emergency Center Project In the form of naming rights for the Town of Kiawah Island in the amount of \$1,000,000 over five years

Mayor Labriola stated the request was to consider approval to support the new Sea Islands Emergency Room (ER) Center Facility that is being constructed by MUSC (Medical University of South Carolina). He noted the importance of funding support and the opportunity to take somewhat of a leadership role in working with MUSC in designating a site in the ER Center Facility for the Town.

Ms. Tillerson stated following an MUSC presentation at the River Course, Councilmember Connelly asked Ms. Tillerson to pursue the idea for Council to consider working out naming rights for the new ER Center Facility.

Ms. Tillerson spoke to MUSC, who was very excited that the Town expressed an interest in possibly partnering in the form of naming rights. After reviewing the various contribution levels, the recommendation is for the Council to consider a \$1,000,000.00 commitment to MUSC over five years for the Town of Kiawah Island Garden. She presented conceptual renderings of what the garden may look like and indicated that if approved, there would be an opportunity for the Town to work with MUSC to design the look and feel of the space.

Ms. Tillerson stated the Town was allocated \$880,000.00 in funding through the ARP (American Rescue Plan), of which \$440,000.00 had been received, with the other half expected next year. Since the MUSC project falls within the use guidelines, Council could use a portion or all of the funds received to offset the project's cost.

Councilmembers' discussed the proposed location and size of the garden, the amount of committed funds required to begin construction of the project, the importance of supporting a facility that would provide emergency, transport, and primary care services to Kiawah and the community, and the level of services that would be provided in the facility. Also discussed were efforts by the County and EMS to improve response times to Kiawah.

Mayor Pro Tem Prickett made a motion to approve the support to the new Sea Islands MUSC Emergency Center Project in the form of naming rights for the Town of Kiawah Island in the amount of \$1,000,000 over five years. Councilmember Parker seconded the motion, and it was unanimously approved.

B. To Consider Approval of the Arts and Cultural Events Council Appointments

Councilmember Connelly made a motion to approve the appointment of Dylan Keith and Kimberly Adele to the Arts and Cultural Events Council. Councilmember Moffitt seconded the motion, and it was unanimously approved.

**C.** To Consider Approval of the reappointment of Stephan Rolando to the St Johns Fire District Commission

Mayor Pro Tem Prickett made a motion to approve the reappointment of Stephan Rolando to the St. John's Fire District Commission. Councilmember Parker seconded the motion, and it was unanimously approved.

**D.** Discussion the draft **Ordinance 2021-10** - An Ordinance of The Town Council of the Town of Kiawah Island Amending Section 15-306 (Noise) of the Kiawah Island Code of Ordinances – **Discussion only** 

Mr. Wilson explained that in June 2020 Council considered amending the noise ordinance to address issues with a problematic sentence deeming a violation of any noise that crossed a property line and the absence of an objective decibel level measurement. At that time, the objectionable was removed, and a subjective violation was added; any loud noise of such character intensity and/or duration as to disturb, injure and/or endanger the comfort, repose, health, peace, or safety of others. Also added was an objective 60 decibel limit as a violation only after 11 pm.

Mr. Wilson indicated the Town has a very simple, straightforward noise ordinance that is legally acceptable. The question of the need for a subjective violation or to only have an objective decibel level violation has been raised and debated. He reviewed some of the issues that could arise in subjective violations. He asked for a discussion of the violations as policy-oriented rather than legal-oriented to obtain feedback and guidance from the Council on whether a subjective measure should be kept in place or just go with decibel limits.

Councilmembers discussed the proposed language, subjective violations, the reason for considering changes to the ordinance, comparisons to ordinances in other coastal municipalities that include both violations, in addition to a separate decibel limit. Also discussed were decibel levels, with Mr. Wilson stating that nighttime level limits fell between 45 to 55 decibels, the most common being a 50, and daytime level limits at 55 or 60. He also noted that limits could be set for different areas of the island.

Mayor Labriola felt that subjective language should apply only to unique circumstances and not set limits, or a platform would be a disservice to the community. Dr. Parker questioned if there were distance measurements. Mr. Wilson indicated there is a distance measurements of 50 feet out and where the measurement is taken. In his experience, he felt the complainant's property line was the best place for measurement with the current ordinance stating at the inside of the nearest complainant's property line. Councilmembers discussed if there were exceptions for events, options of subjection language and the blending of language for subjective and objective violations, adjustments that could be made to times and decibel levels, daytime complaints, and background on setting decibel level at 60 in the current ordinance. Councilmembers also reviewed noise ordinances from other municipalities.

Mayor Labriola suggested a comparison of the Town's current noise ordinance to those from other Resort coastal communities. Dr. Parker also suggested escalating penalties for those sequentially and chronically in violation.

Mayor Labriola indicated that further input can be submitted and will be considered.

## Roger Warren - 8 Sand Alley

Mr. Warren, President of the Resort, stated the discussion of the noise ordinance was of great importance to Resort's operation. He provided history on a complaint filed 10- or 12-years ago for a noise ordinance violation at Mingo Point that was challenged with the Municipal Court Judge. The judge threw the case out because it was, in his words, "unconstitutional" based on the subjectivity of what was there. He believed that no changes had been made to the noise ordinance since that time until recently. The Resort is the single largest organization with activities in the evening where someone could take

issue. He stated that the Resort's philosophy is that they understood the sound limitations were up to 11 pm and worked very hard to cooperate with the neighbors and community to comply, understanding the role in the community, and have worked hard not to become a habitual problem. He noted that there had been only a few complaints this year from the same location, the Ocean Course, where events are predominantly held outside.

Mr. Warren stated that the Resort wants to work with the Town on the noise ordinance and want residents to be comfortable in their homes and not feel that events are a disturbance, but those events are an important part of the Resort's business. The Resort is happy to work with the Town on something reasonable and hits the intent, making sure it is something that everybody can live with.

## Doug Benham - 119 Ocean Course Drive

Mr. Benham stated that there are things that the Ocean Course can do, such as putting up soundproof tents and putting speakers facing the ocean. He indicated that he had talked to the Resort staff about a number of things that have fallen on deaf ears. He stated he wants the Resort to be successful but does not like to be in his house and hear base at 9, 10, or 11 o'clock when the event ends. He noted there was no existing noise ordinance on the island from 7 am to 11 pm, and it would be up to him to convince the officer that the noise was good or bad. All that is asked for is what the reasonable standards are, not for people talking on porches but having the enjoyment of your property without being subject to construction crews blasting radios all day long, renters out by the pool playing loud music, and golfers on the course blasting music up and down the fairways.

Mayor Labriola stated that when Ms. Tillerson and Mr. Wilson are ready, there will be another discussion and suggested consulting with professionals in the field to obtain feedback or definition on sound levels and how they are transferred.

## E. Discussion of the Kiawah Island Wildlife Office Expansion

Mr. Gottshalk presented to the Councilmember an estimate of the construction costs received from the architect. He indicated the high conservative estimate for the total cost would be approximately \$240,000.00, including market volatility, contingency, and contractor overhead. Based on the estimate, he reviewed a breakdown of the project with office expansion as the main and other parts as add-ons:

Two offices in the garage for the Wildlife Department:\$132,000.00New car wash area:\$29,000.00Secured outdoor storage:\$14,700.00Bathroom renovation:\$5,500.00

Mr. Gottshalk stated the office expansion was within the \$150,000.00 that was budgeted for the garage renovations.

Mr. Moffitt asked if approval is given to solicit bids, will there be a requirement to bid the components separately. Mr. Gottshalk stated the primary bid would be for the office expansion with the other components priced separately, giving the option for Council to select the components to be completed.

Councilmember agreed to have the garage renovations put out for bid.

Councilmember Connelly made a motion to move into Executive Session Pursuant to discuss a Personnel and Contractual Matter Related to Annual Review of the Town Administrator. Councilmember Parker seconded the motion, and it was unanimously approved.

### IX. Executive Session:

A. Executive Session Pursuant to Section 30-4-70(a)(1)(2) Concerning a Personnel and Contractual Matter Related to Annual Review of the Town Administrator

Council may act on matters discussed in Executive Session after exiting Executive Session.

Mayor Pro Tem Prickett made a motion to exit Executive Session and return to Regular Session. Councilmember Parker seconded the motion, and it was unanimously approved.

Mayor Labriola stated Council discussed the personnel matter relating to the Town Administrator.

Councilmember Connelly made a motion to allow the Mayor to negotiate the contract with the Town Administrator. Councilmember Moffitt seconded the motion, and it was unanimously approved.

## X. Town Administrator's Report:

Mr. Jordan updated the Clemson Study and the SGA (Second Generation Anticoagulant) issue with the island bobcats. He stated this week was Save the Bobcats week, with Ms. Braswell pushing out a lot of social media content that was well received and generated a great deal of interest. He also stated an interview on the Kiawah Bobcat issue with ABC New 4 would air this evening.

Mr. Jordan stated animals continue to be tested to look for anticoagulant concentrations. SGA levels are showing a decline from the levels six months to a year ago. Bobcat numbers are showing a slight rebound with good reproduction this year and more resident sightings.

Mr. Jordan stated Council met the research crew of the Clemson Research Project when they were on Kiawah. Ms. Keating, the Ph.D. student is officially at Clemson now, and work has begun on her detailed research proposal, which should be received by December 1st. Mr. Jordon was asked to work on Ms. Keating's committee and will be involved in all the decisions regarding the project and how the data will be analyzed. He indicated that fieldwork is ready to start in February 2022. He also noted that no additional funding commitments had been received and is still waiting on commitments from the Community Association and the Conservancy. The Conservancy is waiting on the full proposal and board approval, and the Community Association has a placeholder of \$25,000.00 for next year's budget.

Mr. Gottshalk gave updates on the open projects in the Public Work Department. The fabrication of new signs for the Parkway is underway. The vendor has completed all the work and is waiting on the delivery of the timber, which was expected to take eight weeks. Installation of the completed signs is anticipated to be before Thanksgiving.

Mr. Gottshalk stated that the landscape maintenance contract, the landscape installation at the Municipal Center, and the Beachwalker Drive pedestrian and bicycle safety project are currently out for bids. The bids close Friday, October 15<sup>th,</sup> after which the submittals will be reviewed and a recommendation made to the Ways and Means Committee at the end of the month.

Mr. Gottshalk stated that the approval needed for the Kestral Court site had been obtained from the ARB and Berkley Electric with working continuing with Southwest on the specific language in the land lease agreement. The next phase will be to have LS3P produce the construction-ready design documents to be sent out for bid.

## XI. Council Member:

- a. Committee Updates
- **b.** General Comments

Councilmember Connelly reported that in Public Safety, Chief Walz, the fire chief of the St. John's Fire District's (STJFD), has retired and moved back to Pittsburg. Chief Ryan Kunitzer was named as her replacement. She also reported on the \$660,000.00 grant the STJFD has received, which will provide paramedic training for 20 firefighters.

Councilmember Connelly reported on the EMS vehicle to be stationed at the firehouse and used when EMS staff is on-site.

Mayor Pro Tem Prickett reported on the two major initiatives going on within the County. The most recent announcement was the extension of I-526. With the importance to the community, he encouraged all Kiawah residents to submit their comments to the County. He reported on the Main Road Corridor Program Sections A, B, and C, which impacts Kiawah residents the most. He stated that Mr. Taylor has been leading a task force that includes Paul Roberts, who has studied the road issues for the last 20 years, former mayor Charlie Lipuma and he has also been involved. Regular meetings with Seabrook and representatives from Johns Island have taken place to see if common ground could be achieved on the issues. He noted that Kiawah and Seabrook have a good understanding of what is thought of as a good alternative to meeting the community's needs and help in moving forward. Once finalized, the hope is to present to both Town Councils and the County's representatives.

Councilmember Parker reported on the Go Greener interagency as hoc working group. He stated that great progress has been made and that he and Ms. Braswell have been working on crafting a formal communication for the residents scheduled to go out later this week. He noted that each organization has committed to a multi-year timeline to do things within their organizations to help reduce the carbon footprint.

XII. Citizens' (	Comments:
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None

## XIII. Adjournment:

Councilmember Connelly made a motion to adjourn the meeting at 5:06 pm. The motion was seconded by Councilmember Parker and was unanimously passed.

Submitted by,	
Petra S. Reynolds, Town Clerk	
Approved by,	
John D. Labriola, Mayor	
 Date	



# TOWN OF Kiawah Island South Carolina

Annual Comprehensive Financial Report

FY Ended June 30, 2021



Mayor John D. Labriola Council Members
Maryanne Connelly
John Moffitt
Scott Parker
Dan Prickett

Town Administrator Stephanie Monroe Tillerson Treasurer Dorota Szubert



## **TOWN COUNCIL**

Agenda Item



## **Request for Town Council Action**

TO: Mayor and Council Members

FROM: Jim Jordan

SUBJECT: Aerial Photography and Lidar

DATE: November 2, 2021

## **BACKGROUND:**

The Town of Kiawah Island (TOKI) has conducted high-resolution aerial photography (true color and infrared) of all of Kiawah Island periodically since 2000. Historical flights were conducted in 2000, 2005, 2010, 2014, and 2018. Aerial photography is used by all Town departments. Lidar (light detection and ranging) uses airborne lasers to determine precise elevations of an area. The Town last conducted a Lidar survey of the island in 2005.

### ANALYSIS:

Our current aerial photography is 4 years old and out-of-date for mapping purposes. Over the last 4 years, a number of new roads and developments have been completed, the beach has shifted dramatically, and new homes have been constructed. Updated photography will allow Town Staff to update a variety of mapping layers within the GIS environment. This new photography is also vital to the Town's Resilience planning and will provide needed data to ensure that flooding and sea level rise maps are as accurate as possible.

Our Lidar data is 16 years old and in need of updating. With developments in Lidar technology, the proposed project will be much more detailed and accurate than our historic data. The project will yield a design-grade topographic map of the island, virtually eliminating the need for traditional ground-based surveys. This will provide considerable benefits to the Town, as well as KICA and the Kiawah Conservancy.

Town Staff, along with representatives of KICA and the Kiawah Conservancy, have discussed this proposed project in great detail with our current mapping contractor, Kucera International, Inc. The specifications presented meet the needs of all three entities. Kucera has a long history of strong performance on Town mapping projects. Because they have conducted the last 3 mapping projects for the Town, they already have existing ground control and a digital elevation model (DEM) in place. This uniquely positions them to provide a quick, accurate, and cost-effective project for the Town.

The total cost of the proposed work is \$84,900. Deliverables and timeline for completion is provided in the included proposal from Kucera. The cost for the work will be split equally between the Town, KICA, and the Kiawah Conservancy.

### **ACTION REQUESTED:**

Approval of a contract with Kucera International, Inc. to conduct aerial photography and elevation mapping of Kiawah Island. The cost to the Town (1/3 share) will be \$28,300.

**BUDGET & FINANCIAL DATA:** This is a budgeted expense. \$35,000 is available in the Aerial Photography line item out of County ATAX.

## CONTRACT AGREEMENT

## KUCERA INTERNATIONAL INCORPORATED

AERIAL PHOTOGRAPHY - DIGITAL PHOTOGRAMMETRY - GIS SERVICES

MAIN OFFICE: BRANCH OFFICES:

38133 Western Parkway 3889 Grove City Road 110 W Reynolds St., Suite 207 1121 Boyce Road, #3100 Willoughby, Ohio 44094 Grove City, Ohio 43123 Plant City, Florida 33563 Pittsburgh, Pennsylvania 15241 (440) 975-4230 (614) 539-3925 (813) 754-9247 (724) 942-2881

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_\_, 2021, between the Town of Kiawah Island, 4475 Betsy Kerrison Parkway, Kiawah Island, SC 29455, hereinafter referred to as the "Town", and Kucera International Inc., an Ohio corporation, 38133 Western Parkway, Willoughby, OH 44094, hereinafter referred to as the "Consultant."

WHEREAS, the Town desires to engage the Consultant to provide professional aerial mapping services as described in the Town's email request dated August 19, 2021 and subsequently adjusted in a phone conference with the Town, Kiawah Island Community Association (KICA), and Kiawah Conservancy on September 21, 2021.

**WHEREAS**, the Consultant desires to render those services as described in Section 1: Scope of Services;

**NOW, THEREFORE**, the Town and the Consultant in consideration of the mutual covenants contained herein agree as follows:

## SECTION 1: SCOPE OF SERVICES

The Consultant will provide to the Town new, Winter 2022 digital aerial photography, digital orthophotography, aerial lidar surveying, digital elevation and surface elevation modeling (DEM/SEM), hydro flattened DEM and digital terrain modeling (DTM), 1' contour topography, and associated services and data products (e.g., control survey, aerotriangulation) covering the Town's designated area of approximately 32 square miles.

The digital aerial photography will be captured in 4-band at 2" resolution and digital orthoimagery delivered at this resolution in 3-band color IR form as uncompressed tiles and a SID-compressed projectwide mosaic. The aerial lidar will be captured at 24ppsm density. The DEM and DTM will contain hydro feature and other breaklines as needed for the production of the projectwide 1' contour mapping. The data deliverables will include FGDC project level metadata.

The project area and services to be performed are more specifically described in Kucera's proposal letter to the Town dated October 4, 2021, which is attached hereto as Exhibit A.

## **SECTION 2: DEFINITION OF TERMS**

- A. **Contract Officer** shall refer to the duly designated Town official charged with general administration and coordination of matters related to this Agreement on behalf of the Town.
- B. **Project Coordinator(s)** shall refer to the Town's designated person or persons who will serve as primary points of contact and be responsible for coordinating all aspects of work to be performed with the Consultant's assigned Project Manager.
- C. **Chief Administrator** shall refer to an official of the Consultant charged with general administration and coordination of matters related to this Agreement.
- D. **Project Manager** shall refer to the person assigned by the Consultant to serve as the Consultant's primary point of contact, with responsibility for oversight of the Consultant's work, reporting the status of the work, and otherwise coordinating with the Town Project Coordinator.
- E. **Project Area(s)** shall refer to the areas designated for which the Consultant shall perform the services referenced and described in this Agreement.
- F. **Work/Deliverables** shall refer to all data provided to the Town corresponding to the contracted services and described herein, e.g., imagery, reports, digital mapping, etc.
- G. **Delivery** shall refer to transmittal of data corresponding to the contracted services from the Consultant to the Town.
- H. **Acceptance** shall refer to the Town's written or verbal acknowledgment of approval of deliverables submitted and associated series performed by the Consultant.

## **SECTION 3: RESPONSIBILITIES OF THE TOWN**

A. The Town shall assign a Project Coordinator(s) with the authority to review and approve materials and deliverables submitted by the Consultant and to act as liaison between the Town and Consultant.

- B. The Town shall within a reasonable time frame review any samples or deliverables and approve or comment on same.
- C. The Town shall within a reasonable time after a request is received from Consultant answer or address any unforeseen questions that may arise during the course of the work to be performed by Consultant.
- D. The Town shall provide any Town-designated source data or support to the Consultant required to complete the project work.
- E. The Town at its expense shall pay for the shipment of any materials to the Consultant.

## **SECTION 4: RESPONSIBILITIES OF THE CONSULTANT**

- A. The Consultant agrees to perform in a professional manner all of the services outlined in <u>Section 1: Scope of Services</u> and as further described in Exhibits A and B.
- B. The Consultant agrees that no changes shall be made in the services outlined in <u>Section 1</u>: <u>Scope of Services</u> and/or Exhibit A without the express written prior consent and Agreement of the Town and the Consultant.
- C. The Consultant shall be fully responsible for the technical adequacy and accuracy of the work. No action by the Town in its review, approval and/or acceptance or by any payment made hereunder shall be construed as a waiver of the technical adequacy and accuracy of the Consultant's work.
- D. The Consultant shall assign to the work a Project Manager whose duties will be to oversee and coordinate the work with the Town's Project Coordinator(s) and make regular status reports to the Town.
- E. The Consultant shall pay for the shipment of all deliverables and materials to the Town.
- F. The Consultant shall begin to perform the services upon receipt of the Town's notice to proceed signed by the Contract Officer or designee of the same and shall complete such work as outlined in <u>Section 5</u>: Time of Completion.
- G. The Consultant will retain a backup copy of all significant interim and final data produced for the contract, e.g., raw aerial imagery, lidar return, digital orthophoto imagery, etc.
- H. The Consultant shall obtain any non-Town owned/provided outside source data designated for use in the completion of the contract work.

## **SECTION 5: TIME OF COMPLETION**

The Consultant agrees to complete the project work according to the following schedule:

<u>Phase</u>	<u>Start</u>	<u>Complete</u>
Project Initiation	1/1/22	1/15/22
Ground Control Survey	1/15/22	1/31/22
Aerial Imagery & Lidar Acquisition	2/1/22	2/28/22
Aerial Data Processing/Review & DEM Preparation	3/1/22	3/30/22
Aerotriangulaton & Classified Lidar Return	4/1/22	4/30/22
Digital Orthoimagery & Hydro-Flattened DEM	5/1/22	6/30/22
Contour Topography & Metadata	6/1/22	8/30/22

All contract work shall be completed by August 30, 2022, with the exception of add-on work mutually agreed to be subsequently completed and any revisions or additions to the work required for contract compliance determined subsequent to completion/delivery.

Consultant agrees to exercise reasonable care and diligence in anticipating potential problems and delays in completing the work. Such care shall include anticipating and making provision for loss of critical employees, normal failure of equipment, and other such schedule-disrupting occurrences normally experienced and reasonably capable of being anticipated by like organizations. Extensions of time may be granted by the Town upon written request of the Consultant, provided such request is made prior to the expiration of this Agreement, do not involve acts of failure by Consultant to exercise reasonable care and diligence as noted above, and are based on documented evidence of need under one or more of the following criteria:

- 1. Any required aerial photo reflights which may be necessary and cannot be completed during the calendar year in which the Project Area work is authorized.
- 2. Extensions by the Town in providing notices to proceed, Town-designated source data, or review/acceptance of the Consultant's work.
- 3. Significant changes in the scope of work/project parameters which affect scheduling.
- 4. Acts of nature or other conditions or circumstances beyond the control of the Consultant which are not due to its negligence or that of its employees, agents or assigns, but which affect the Consultant's ability to perform.

## **SECTION 6: PROGRESS REPORTS**

Following the first day of execution of this Agreement, the Consultant shall submit reports of progress semi-monthly which describe work completed up to the date of such report.

## **SECTION 7: DELIVERY OF WORK/DELIVERABLES**

Consultant shall certify to the Town when the work or any portion thereof has been completed and products of such work have been delivered to the Town for inspection.

## **SECTION 8: INDEPENDENT CONTRACTOR STATUS**

The status of the Consultant under this Agreement with respect to the services to be performed by the Consultant hereunder shall be that of "independent contractor." Nothing herein shall be construed to create an employer/employee relationship between the Town and the Consultant or any other subconsultant hired by the Consultant. The Town has an interest only in the results to be achieved, and the conduct and control of the services to be provided will lie solely with the Consultant and its employees, or any other subconsultant hired by the Consultant.

## **SECTION 9: COVENANT AGAINST CONTINGENT FEES**

The Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, the Town shall have the right to annul this Agreement without liability, or, at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, percentage, brokerage fee, gifts, or contingent fee.

## **SECTION 10: INSURANCE**

Consultant shall take out and maintain during the life of this Agreement such public liability and property damage insurance as shall protect Consultant and the Town from claims for damages for personal injury, including accidental death, as well as for claims for property damage, which might arise from operations under this Agreement, whether such operations be by Consultant or any subconsultants, or by anyone directly or indirectly employed by either of them.

Consultant shall also take out and maintain for the term of this Agreement the following coverages: \$2 million general aggregate general liability; \$1 million combined single limit automobile liability; \$3 million aircraft insurance; \$5 million excess liability; statutory workers' compensation liability; and professional liability in the amount of not less than \$1 million.

All insurance policies shall be issued by responsible companies who are acceptable to the Town. The Consultant shall not cause any insurance to be canceled nor permit any insurance to lapse. All insurance policies shall contain a clause to the effect that the policy will not be canceled, reduced, restricted, or limited until thirty (30) days after the Town has been notified in writing by registered or certified mail, return receipt requested. Certificates of insurance shall contain transcript from the proper office of the insurer, the location, the operations to which the insurance applies, the expiration date, and the above-indicated notification clause.

## **SECTION 11: WARRANTY**

The Consultant, by signing this Agreement, acknowledges full understanding of the extent and character of the work required and the conditions surrounding the performance thereof. The Town will not be responsible for any alleged misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Agreement by the Consultant serves as its stated commitment to fulfill all the conditions referred to in this Agreement.

Consultant warrants that the work performed and deliverables provided under this Agreement shall conform to the project specifications and the relevant recognized standards and procedures of the aerial mapping profession, including ASPRS 2014, USGS Lidar Base Specifications, and US National Standards of Spatial Data Accuracy (NSSDA). The work shall be of high quality, and within the tolerances allowed by the project specifications and standards. If the Consultant is notified in writing by the Town of a discrepancy, deficiency, inaccuracy, or fault in the work, within thirty (30) days of such notice the Consultant shall re-perform such portions of the work necessary to correct the fault. If the fault requires a repeat of the aerial flyover of the project area, the repeat flyover will be performed at the first available opportunity at a time of the year mutually agreed upon with and approved by the Town. All reworks shall be made at no additional cost to the Town.

The warranty will apply indefinitely for major errors/defects found in Consultant's mapping and for one year from the time of final data delivery for cosmetic/minor revisions and replacement of lost data files previously documented to be delivered. The Consultant shall not be liable for secondary, incidental, or consequential damages of any nature resulting from any work properly performed under this Agreement.

## **SECTION 12: INSPECTION AND CORRECTION**

The Consultant shall correct any major defects/errors in the work found following the Town's review period, and shall make accessible to the Town any information, data, materials and processes the Town deems reasonably necessary to evaluate and confirm the accuracy and quality of Consultant's work. The Consultant shall not be liable for any expense of the Town's review or inspection processes.

The Town shall promptly following its inspection notify the Consultant of the nature of any work deemed non-acceptable. Upon such notification Consultant shall within sixty (60) days replace, modify or adjust its work to meet specifications, at its expense. Work shall be considered acceptable to the Town if indicated as such by the absence of other notification.

## **SECTION 13: ACCEPTANCE**

The Town shall give written notice of its acceptance or non-acceptance of work to Consultant within a 90-day review period. If no such notice is given to the Consultant, the work shall be deemed accepted by the Town, subject to the Consultant's warranty.

## SECTION 14: OWNERSHIP AND USE OF PROJECT DATA

- A. The Consultant hereby understands and acknowledges that any and all information gathered, generated and delivered to the Town as outlined in the Scope of Services is for the exclusive use and benefit of the Town, and shall be the sole property of the Town and that such information shall not be disseminated by the Consultant without the express written consent of the Town.
- B. All information, data, designs, plans, drawings, maps, imagery, specifications, or other work furnished to or developed for the Town by the Consultant, its employees, agents, or assigns, pursuant to this Agreement, shall be the sole property of the Town, and all rights therein are reserved by the Town. The Consultant, its assigns, employees, or agents shall not provide any imagery or map data developed under this Agreement to any party other than the Town without the Town's consent.
- C. The Consultant, upon the express written consent of the Town, may fill requests by non-Town agents, business entities or individuals for services/products from the project data which are not part of this Agreement. Should this occur, the Consultant shall charge a reasonable fee for its service and at the Town's option will credit the Town an agreed upon percentage of such fees.

- D. The Consultant hereby agrees to maintain one copy of all information gathered, generated, and delivered within its office in digital computer file form to serve as a backup to the data furnished to the Town.
- E. The Town shall be entitled to rely on the technical accuracy of the data furnished by the Consultant with the understanding that the Consultant is not responsible for alterations made to and/or improper interpretation/use of the data by the Town.

## SECTION 15: COPYRIGHTS AND DISCLAIMERS

- A. Copyright and title to all final deliverable products (e.g., aerial imagery, digital orthophotography) shall pass from the Consultant to the Town upon the Town's payment for the deliverables.
- B. Use by an outside party of the project data while in the Consultant's possession shall require advance approval from the Town.
- C. If the project data is to be made available by the Town for use by outside entities, the Town and Consultant shall prior to entering an Agreement with said outside entity prepare a statement/disclaimer as to its proper use/interpretation for the protection of both the Town and Consultant.

## **SECTION 16: COMPENSATION FOR CONSULTANT'S SERVICES**

In consideration for the services performed hereunder, Consultant shall be paid the following by project phase/deliverable:

Service/Deliverable	<u>Cost</u>
Digital aerial photo acquisition	\$16,500
Ground control survey	\$3,500
Aerotriangulation and DEM preparation	\$2,500
Digital orthophotography	\$16,500
Aerial lidar acquisition and DEM + SEM	\$9,500
Hydro feature compilation and hydro-flattened DEM	\$11,500
Added breakline feature compilation and digital terrain model (DTM) for developed portion of island (~11 square miles)	\$9,900
Projectwide 1' contour topography, including design grade for developed portion of island	\$15,000
Total:	\$84,900

Invoicing for each phase will be based upon documentation of percentage completion and/or transmittal of corresponding phase deliverable.

The fees listed above include all ancillary services/products required for each cost item as defined in Exhibit A. Optional services will only be performed by the Consultant with written authorization of the Town at mutually agreed cost.

## **SECTION 17: INVOICING**

The Consultant's invoices shall be submitted over the course of the contract and reflect work completed and delivered and/or documented by percentage of project phases as indicated in Section 16 (Compensation) of the Contract Agreement. The Town agrees to review and process/pay the Consultant's invoice within thirty (30) days of receipt. If an invoice is validly disputed by the Town or otherwise found to be in error, the invoice will be voided and a new invoice submitted at the agreed amount with a new thirty (30) day payment period.

## **SECTION 18: PRICE GUARANTEE**

The fees quoted for work contracted for or by the Town as part of this Agreement or quoted by the Contractor for additional services during the course of this Agreement shall be applicable until December 31, 2022. Should the Town defer any portion of the originally specified work beyond this date, the fee for such work deferred may be adjusted by the Consumer Price Index (CPI) for the prior year or other mutually agreed upon factor.

## SECTION 19: COMPLIANCE WITH THE LAW

- A. The Consultant under this Agreement is an equal opportunity employer and shall conduct all contract activities without regard to race, color, national origin, sex, sexual orientation, religion, age, and other such contract participant characteristics to the extent that such do not interfere with satisfactory contract performance.
- B. The Consultant shall at all times observe and comply with all applicable statutes, ordinances, rules, and regulations of federal, state and local governments in effect at the execution of this Agreement.

## **SECTION 20: TERMINATION**

This Agreement shall terminate upon the Town's acceptance of and payment for all authorized deliverables and services. The Consultant will retain a backup copy of all final and significant interim data deliverables for the contract, e.g., aerial imagery, digital orthophoto imagery, DTM/contour mapping, etc.

The Town may terminate this Agreement with 60 days written notice to the Consultant for reasons unrelated to the Consultant's performance (e.g., lack of adequate funding for continuation). In the event of such termination, the Town shall be liable for the payment of all work properly performed prior to the effective date of termination, including all portions of work which were partially completed.

## **SECTION 21: AMENDMENTS**

No amendment to this Agreement shall be effective unless it is in writing and signed by duly authorized representatives of each party hereto.

## **SECTION 22: AGREEMENT INTEGRITY AND PRECEDENCE**

This document and attachments represent the full and final Agreement between the Consultant and the Town. If any provisions of the Agreement are deemed void or unenforceable, all other provisions will remain in effect.

## **SECTION 23: JURISDICTION AND SIGNATURES**

This Contract is hereby signed in the State of South Carolina and the laws of the State of South Carolina shall be applicable hereto. This Agreement shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State of South Carolina.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date hereinabove first written.

TOWN OF KIAWAH ISLAND	KUCERA INTERNATIONAL, INC.
By:	Ву:
Authorized Town Representative	John Antalovich, Jr., PE President
Date:	Date:



Town of Kiawah Island 4475 Betsy Kerrison Pkwy Kiawah Island, SC 29455 Corporate Headquarters October 4, 2021

Attn: Jim Jordan, Wildlife Biologist

Re: Revised Proposal for 2022 Aerial Orthophotography and Lidar Services

Dear Mr. Jordan:

In response to your request Kucera International Inc. is pleased to offer this revised proposal for 2022 aerial orthophotography and lidar services covering Kiawah Island. Kucera has successfully completed multiple aerial orthoimagery surveys of the Town, the most recent being in 2018. Through this experience Kucera has developed a thorough understanding of the Town's project area and aerial mapping requirements.

For the 2022 project Kucera will perform digital aerial photography of the Island in January -February as soon after the Town's authorization to proceed and the placement of ground control targets as weather and ground conditions permit (i.e., clear skies, no excessive crosswinds, no fog, smoke, flooding). The time of photo capture will be limited to within approximately 45 minutes of low tide and during the time of the day when the sun height is above 30 degrees, with the objective of avoiding excessively long feature shadows and excessive sun glare off the water. The preferred flying time will be the morning hours when there is generally less glare off the water. The photography will be taken in 4-band using one of Kucera's latest generation, large format (20,000 pixel), high resolution (5 micron resolving power) 4-band Vexcel Eagle digital frame or Leica ADS100 digital pushbroom camera/sensor systems operated from one of Kucera's twin-engine Navajo Chieftain aircraft. The flying height used will be approximately 3,500' - 4,800' above ground, yielding a direct image capture resolution of 0.25' (3"). Alternatively, the photo capture can be performed from a lower flying altitude (~2,200' - 3,200') to yield imagery capture at a higher, 2" (0.17') resolution. The flyover in either case will be accomplished in a single, 1 - 2 hour flight session. The flight lines used for the image capture will be spaced apart so as to yield at least 30% side overlap coverage between adjacent lines. In the line of flight, the imagery will be captured with at least 60% stereo coverage overlap between successive exposures.

The imagery capture will be performed from one Kucera's twin-engine Piper Navajo aircraft having two sensor ports. Kucera's Optech T2000 2MHz aerial lidar system can be operated from the second port or used to performed ~16 or ~24ppsm aerial lidar capture simultaneously with the aerial photo capture.

Both the aerial photo imagery and optional aerial lidar will be georeferenced to 15 - 20 ground-surveyed photo id feature control points spread through the project area. Kucera's ground control from the 2018 project will be reused to the extent possible to maximize georeferencing consistency between surveys. The georeferencing datums will be NAD83/11 South Carolina State Plane horizontal and NAVD88/18 vertical datums, with International feet coordinates and US feet elevations. The aerial photo georeferencing will be finalized through a robust aerotriangulation process and the aerial lidar georeferencing will be accomplished by a best fit elevation "bump" to the control.



The elevation model/DEM used for the orthophoto image rectification will be Kucera's DEM from the 2018 project or a new DEM derived from the simultaneously performed aerial lidar survey. In the former case, the 2018 DEM will be photogrammetrically reviewed against the newly captured stereo aerial imagery and updated as needed to support the new orthoimage production.

The project orthophotography will be created using Inpho OrthoMaster processing technology. Four-band, three-band color, and three-band color IR versions of the triangulated digital aerial photo imagery will be batch rectified to the project DEM data. The batch-rectified imagery will be QC-reviewed for accuracy and absence of anomalies. The rectified imagery will be batch process mosaiced, tone and color-balanced, and output as individual ortho tiles. The individual tiles will be manually QC reviewed and edited as needed prior to delivery. The finalized 4-band and 3-band color and color IR orthophoto tiles will be delivered in uncompressed tile form in georeferenced TIF format and in 20:1 SID-compressed tile or mosaic form. Metadata in FGDC format will also be provided. The orthophotography will meet ASPRS Class 1 accuracy standards for positional representation of ground-based features, i.e., horizontal displacement RMSE within 1'.

The optional lidar return will be processed/classified to bare earth and non-ground return. The base lidar deliverables to the Town will be the classified return in LAS format, a raster bare earth DEM dataset in GeoTIFF format, a surface elevation model (SEM) of ground and major non-ground return (i.e., return from structures and vegetation) and metadata. The bare earth lidar return will have QL1 level vertical accuracy, i.e., within 0.64′ (19.6cm) and 1′ at 95% confidence for non-vegetated and vegetated areas, respectively and a non-vegetated area RMSE within 0.33′ (10cm).

In addition to the classified lidar return and bare earth DEM Kucera can provide hydro feature breaklines, hydro-flattened DEM, and 1' contours for the entire project area along with additional breaklines consisting of road edges, road centerlines, curbs and other significant linear grade changes for the developed portion of the island (see Exhibit 1 - ~11 square miles) for the creation of a digital terrain model (DTM) and design-grade 1' contours (0.5' vertical accuracy) for this developed portion. For the hydro-flattened DEM the bare earth lidar return will be merged with the compiled hydro feature polygons and "flattened" to a consistent water elevation within the hydro feature boundaries. The hydro-flattening rules. The hydro-flattened DEM will be provided as a deliverable to the Town in raster GeoTIFF or other specified form.

For the 1' contour generation from the hydro-DEM and DTM Kucera will use Global Mapper or CIP software, both of which are modified TIN-based generation programs which allow for some degree of elevation "float" and smoothing in the contour generation. The generated contours will be subject to a QC check and basic edit for correction of any significant anomalies and addition of spot and water elevations. The contours will be carried through structures but will be adjusted for proper representation of road crowns and curbs. The contour topography will be delivered in geodatabase, AutoCAD, or other specified GIS or CAD format.



Kucera's fees for the services described are as follows:

Item/Phase	Fee
<ol> <li>Digital aerial photo acquisition</li> <li>a. 3" GSD</li> <li>b. 2" GSD</li> </ol>	\$15,000 \$16,500
<ul><li>2. Ground control survey</li><li>a. For 3" GSD orthos</li><li>b. For 2" GSD orthos</li></ul>	\$3,000 \$3,500
<ol> <li>Aerotriangulation and DEM preparation</li> <li>For 3" GSD orthos</li> <li>For 2" GSD orthos</li> </ol>	\$2,000 \$2,500
<ul><li>4. Digital orthophotography</li><li>a. 3" GSD</li><li>b. 2" GSD</li></ul>	\$10,000 \$16,500
<ol> <li>Aerial lidar acquisition and DEM + SEM</li> <li>a. 16ppsm (combined w/3" GSD orthos)</li> <li>b. 24ppsm (combined w/2" GSD orthos)</li> </ol>	\$7,500 \$9,500
6. Hydro feature compilation and hydro-flattened DEM	\$11,500
7. Added breakline feature compilation and digital terrain model (DTM) for developed portion of island (~11 square miles - see Exhibit 1)	\$9,900
8. Projectwide 1' contour topography, including design grade for developed portion of island	\$15,000

Kucera's proposed completion schedule is as follows:

1.	Aerial imagery and optional lidar acquisition	By ~ February 28
2.	Ground control survey, aerotriangulation, DEM prep	By March 30
3.	Optional classified lidar return, DEM, Sem	By April 30
4.	Digital orthoimagery	
	a. 3" GSD	By May 30
	b. 2" GSD	By June 30
5.	Optional hydro-flattened DEM	By June 30
6.	Optional 1' contour topography	By August 30

We appreciate your consideration and look forward to again serving the Town of Kiawah Island. Please indicate below Items No.s authorized from our fee schedule and please contact me for follow up as needed.

Sincerely,

John Antalovich Jr, PE, PS

President



Authorization for Items:	
Town of Kiawah Authorized Representative	
Date	





## Tab | 3

## **TOWN COUNCIL**

Agenda Item



## **Request for Town Council Action**

TO: Mayor and Town Council Members

FROM: Brian Gottshalk, Public Works Director

SUBJECT: Contractor for Landscape Installation at Town Hall

DATE: November 2, 2021

## **BACKGROUND:**

As approved by Town Council, Town Staff contracted with Outdoor Spatial Design (OSD) to come up with a plan to improve the landscape at the Municipal Complex from a safety standpoint as well as an aesthetic standpoint. This plan mitigates safety hazards in the form of blind curves and sight obstructions, as well as replaces dead and dying plant material.

## **ANALYSIS:**

The RFP for landscape installation was sent out for bid on September 29 with a closing date of October 15. The Town received three bid proposals:

Artigues Landscape and Maintenance, LLC: \$59,951.55
The Greenery of Charleston: \$75,365.69
Jarema Landscapes, LTD: \$91,777.00

Bid proposals were reviewed by a selection committee and Artigues Landscape and Maintenance was the unanimous choice.

## **ACTION REQUESTED:**

Town Staff requests that Town Council to award this project to Artigues Landscape and Maintenance, LLC as they are the lowest qualified bidder.

### **BUDGET & FINANCIAL DATA:**

The cost for this project will be \$59,951.55 and will be sourced from the General Fund.

## SUBMITTAL FORM (Offeror to complete all blanks)

Page One

DATE: 10 15 2021, 2021

## ORGANIZATIONAL INFORMATION

NAME OF OFFEROR:

artiques Landscape & Maintenance, UC

**BUSINESS ADDRESS:** 

PMB 187, 295 Swen Farms Dr. Suite C

Daniel Island, SC 29492

## BY SUBMITTING THIS PROPOSAL, THE UNDERSIGNED OFFEROR REPRESENTS:

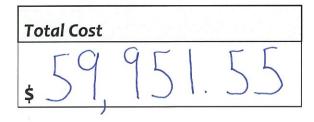
- The offeror has carefully examined specifications for the Services;
- 2. The offeror is familiar with all the conditions surrounding the performance of the Services;
- 3. If awarded the Contract, the offeror will provide all labor, material, supplies and equipment necessary to execute the Services in accordance with the Contract Documents;
- 4. The offeror understands the Town reserves the right to reject any or all responses which does not meet the proposal requirements, or all proposals in the event the Project is canceled, postponed, or if it is in the best interest of Town of Kiawah Island;
- 5. If awarded the Contract, will enter and execute a contract as required in the Invitation to Bid;
- 6. The Offeror is legally able to enter into and perform a contract, if awarded;
- 7. The Offeror is current on all taxes and fees owed to the Town;
- 8. The Offeror has provided proof of insurance as required by the Town.

## III. UNIT PRICING:

Bidder must submit an itemized pricing sheet for all components of the project.

## IV. TOTAL COST:

In Compliance with Request for Proposals, the undersigned hereby proposes to provide all services, materials, equipment, and labor, except as otherwise noted, for the following cost:



NAME OF COMPANY:	
By:Signature	Mauna Angus Print Name
Title: Owner Imm ber	(i.e., Owner, Partner, Corporate Officer, etc.)
Address: 181   81   295 Swa	Farmo Dr. Suite C
city: Daniel Samo	State: 5C zip: 29492
Telephone Number: 843-514-8682	Business Fax Number:
Is your firm aCorporation,	_Sole Proprietorship, orPartnership?
If incorporated, please list state of incorpo	ration:
FEIN or SSN: 81-2980978	



Project / Client -

Proposal for -

Location of work -

Kiawah Island Town Hall

Date -

10/15/21

Trees	Quantity	Unit	Hgt / Cal / Gal	Unit Price	Extended Price	Applicable Notes as per Plans and Specs
Quercus Virginicas/ 'High Rise' Live Oak	9	EA	4" Cal	\$1,000.00	\$9,000.00	
Quercus Virginicas/ Sawtooth Oak	1	EA	4" Cal	\$885.00	\$885.00	
Lagerstroemia indica 'Natchez'/ Crape Myrtle	1	EA	16' Hgt	\$600.00	\$600.00	
Shrubs						Applicable Notes as per Plans and Specs
Ilex vomitoria 'nana'/ Dwarf yaupon holly	94	EA	3 Gal/ 26" O.C. Spacing	\$8.00	\$752.00	On L05, 4 are Transplanted
Muhlenbergia capillaris/ sweet grass	526	EA	1 Gal/ 36" O.C. Spacing	\$7.00	\$3,682.00	
Asclepias incarnata/ swamp milkweed	19	EA	1 Gal/ 36" O.C. Spacing	\$9.50	\$180.50	
Asclepias tuberosa/ butterfly milkweed	46	EA	1 Gal/ 36" O.C. Spacing	\$9.50	\$437.00	
Asclepias syriaca/ common milkweed	11	EA	1 Gal/ 36" O.C. Spacing	\$10.00	\$110.00	
Spartina patens/ patens	1,157	EA	1 Gal/ 36" O.C. Spacing	\$7.00	\$8,099.00	
Liriope muscari/ super blue liriope	300	EA	1 Gal/ 18" O.C. Spacing	\$7.00	\$2,100.00	
Gaillardia pulchella/ indian blanket	49	EA	1 Gal/ 18" O.C. Spacing	\$9.50	\$465.50	
Conoclinium coelestinum/ blue mistflower	29	EA	1 Gal/ 18" O.C. Spacing	\$9.75	\$282.75	
Salvia splendens/ scarlet sage	36	EA	1 Gal/ 18" O.C. Spacing	\$9.00	\$324.00	
Helianthus debilis/ dune sunflower	65	EA	1 Gal/ 18" O.C. Spacing	\$9.00	\$585.00	
Eutrochium purpureum/ joe pye weed	14	EA	1 Gal/ 18" O.C. Spacing	\$10.00	\$140.00	
Baptisia alba/ white false indigo	24	EA	1 Gal/ 18" O.C. Spacing	\$10.65	\$255.60	
Dwarf Fakahatchee	4	EA	1 Gal/ 18" O.C. Spacing	\$10.65	\$42.60	On L05, 4 are Transplanted
Saw Palms	3	EA	3 Gal/ 26" O.C. Spacing	\$25.00	\$75.00	On L06, 3 are Transplanted
Lomandra longifolia/ breeze grass	50	EA	1 Gal/ 36" O.C. Spacing	\$9.00	\$450.00	



DANIELLE BERTOLINI Notary Public-State of South Garolina My Commission Expires June 17, 2027

Turf, Mulch, Irrigation, other					Applicable Notes as per Plans and Spees
SOD	2,101	SF	\$0.60	\$1,260.60	
Straw	350	Bales	\$7.50	\$2,625.00	
Mulch	120	СУ	\$50.00	\$6,000.00	
Irrigation	1	LS	\$4,200.00	\$4,200.00	
Arborist	1	LS	\$6,500.00	\$6,500.00	
Soil amendments	. 1	LS	\$1,200.00	\$1,200,00	
Fransplanting	1	LS	\$5,500.00	\$5,500.00	
Equipmnet/Freight	1	LS	\$4,200.00	\$4,200.00	
	L	ANDSCAPE / IRRIGATIO	N PROPOSAL TOTAL	\$59,951.55	

DANIELLE BERTOLINI Notary Public-State of South Carolina My Commission Expires June 17, 2027





Tab | 4

## **TOWN COUNCIL**

Agenda Item



## **Request for Town Council Action**

TO: Mayor and Town Council Members

FROM: Brian Gottshalk, Public Works Director

**SUBJECT:** New Landscape Maintenance Contractor

DATE: November 2, 2021

## **BACKGROUND:**

In the Spring of 2021, The Town completed a landscape improvement project along the Kiawah Island Parkway. This installation project was fulfilled by Artigues Landscape and Maintenance, LLC, who has since been maintaining the landscape along the Parkway and Beachwalker Drive. This contract expires December 31, 2021.

## **ANALYSIS:**

Town Staff developed an RFP to reflect the new maintenance plan for the Parkway, which also includes the maintenance of the Municipal Center and Beachwalker Drive. The RFP for landscape maintenance was sent out for bid on September 29 with a closing date of October 15. The Town received two proposals for this maintenance contract:

Artigues Landscape and Maintenance, LLC: \$188,650.00 The Greenery of Charleston: \$190,200.00

Bid proposals were reviewed by a selection committee and Artigues Landscape and Maintenance was the unanimous choice.

## **ACTION REQUESTED:**

Town Staff requests that Town Council the approval for Artigues Landscape and Maintenance, LLC to be awarded the landscape maintenance contract for The Town as they are the lowest qualified bidder.

## **BUDGET & FINANCIAL DATA:**

The contract amount will be \$188,650.00 annually and will be sourced from the General Fund.

SECTION D

## SUBMITTAL FORM (Offeror to complete all blanks)

Page One

DATE: 10 15 , 2021

## ORGANIZATIONAL INFORMATION

NAME OF OFFEROR:

artiques landscape & Manit.

BUSINESS ADDRESS:

PMB 187, 295 Seven Furms DR. Smtc C

Daniel Island, SC 29492

## BY SUBMITTING THIS PROPOSAL, THE UNDERSIGNED OFFEROR REPRESENTS:

- 1. The offeror has carefully examined specifications for the Services;
- 2. The offeror is familiar with all the conditions surrounding the performance of the Services;
- 3. If awarded the Contract, the offeror will provide all labor, material, supplies and equipment necessary to execute the Services in accordance with the Contract Documents;
- 4. The offeror understands the Town reserves the right to reject any or all responses which does not meet the proposal requirements, or all proposals in the event the Project is canceled, postponed, or if it is in the best interest of Town of Kiawah Island;
- 5. If awarded the Contract, will enter and execute a contract as required in the Invitation to Bid;
- 6. The Offeror is legally able to enter into and perform a contract, if awarded;
- 7. The Offeror is current on all taxes and fees owed to the Town;
- 8. The Offeror has provided proof of insurance as required by the Town.

Routine Landscape Maintenance (excluding mulch and pine straw)	Annual Cost
Kiawah Island Parkway and Bike Path	82,000.00
Roundabout (Circle)	5,000.00
Municipal Center	26,400,00
Beachwalker Drive and Bike Path	18,000.00
Irrigation Maintenance/Monitoring/Quarterly Inspections for all areas	18,000.00
Annual aeration of all turf areas within the contract	400.00
Tree Management	1,000.00
Warranty for all plant material (includes plants and installation)	0.00
Soil testing	50.00
Subtotal	136,850.00

Mulch and Pinestraw	Quantity per application	Annual Cost
Kiawah Island Parkway and Bike Path (double shredded hardwood mulch 1x)	600 Cubic Yards	29,000.00
Roundabout (double shredded hardwood mulch 1x)	30 Cubic Yards	1,800.00
Municipal Center (Longleaf pine straw 2x per year)	2,006 Bales	15,000.00
Beachwalker Drive and Bike Path (Longleaf pine straw 2x per year)	800 Bales	6,000.00
Subtotal		51,800.00

Total Cost	188,650.00
------------	------------

Additional Pricing for Reference	Cost
Double-shredded hardwood mulch per cubic yard (installed)	58.00
Longleaf pine needles per bale (installed)	7.75
Laborer hourly rate	38.50
Supervisor hourly rate	69.75
Subtotal	

## SECTION E - Pricing Page 2

NAME OF COMPANY: URTIGINS Land Cape & Maint.
By: Signature Print Name
Title:
Address: PMB 187, 295 Swan Farms Dr. Swite C
city: Daniel 18 and State: 50 zip: 29492
Telephone Number: 843.514.8684_Business Fax Number:
Is your firm aCorporation,Sole Proprietorship, orPartnership?
If incorporated, please list state of incorporation:
FEIN or SSN: 81-2981978

#### Certificate Holders 10/20/2019 to 11/2/2020

Certificate Number/Description:

CL2061815012 master WC 19-20 CPP 20-21

Certificate Holder:

Contact:

Address:

City, State, Zip:

Fax Number:

Email:

#### **Description of Operations/Special Conditions:**

Bastin Hall job #19-SC-02

It is agreed that THS Constructors, The Citadel and any other persons or entities are named as Additional Insureds under General Liability, including Ongoing and Completed Operations, Auto Liability and Umbrella policies as required by written contract. The Subcontractors Policies shall be Primary and Non-Contributory as respects work performed on this project. A Waiver of Subrogation shall apply in favor of the Additional Insureds as respects the General Liability Auto Liability, Workers' Compensation and Umbrella. Umbrella policy includes primary & non-contributory & Limits are excess over the General Liability, Auto Liability and Workers' Compensation policies. 30 days Notice of Cancellation

Certificate Number/Description:

CL2061815012 master WC 19-20 CPP 20-21

Certificate Holder:

Contact:

Address:

City, State, Zip:

Fax Number:

Email:

#### Description of Operations/Special Conditions:

Certificate Holder listed as additional insured under the above captioned General Liability policy when required by written contract or agreement. Reece Artigues is excluded on the Workers Compensation policy.

Certificate Number/Description:

CL2061815012 master WC 19-20 CPP 20-21

Certificate Holder: Town of Kiawah Island

Contact:

Address:

21 Beachwalker Drive

City, State, Zip:

Kiawah Island, SC 29455

Fax Number:

Email:

mja@artigueslg.com

#### **Description of Operations/Special Conditions:**

Certificate Holder listed as additional insured under the above captioned General Liability policy when required by written contract or agreement.

Certificate Number/Description:

CL2061815012 master WC 19-20 CPP 20-21

Certificate Holder:

Town of Kiawah Island

Contact:

Address:

4475 Betsy Kerrison Parkway

City, State, Zip:

Johns Island, SC 29492

Fax Number:

Email:

mia@artiqueslq.com

#### **Description of Operations/Special Conditions:**

Town of Kiawah Island, the owner, the architect, and the architect's consultants are included as additional insured in regards to General Liability on a primary and non-contributory basis. 30 day notice of cancellation applies.



#### **REMINDER:**

IF WE ARE SELECTED TO PERFORM UNDER THE TERMS OF THIS PROPOSAL WE WILL EXTEND OUR INSTALLATION WARRANTY ON ALL NEWLY INSTALLED MATERIALS THAT WERE ASSOCAITED WITH THE KIAWAH ISLAND PARKWAY RENOVATION PROJECT THAT WAS COMPLETED IN LATE APRIL OF 2021. THIS EXTENDED WARRANTY WILL BE IN PLACE FOR AS LONG AS THE MAINTENANCE CONTRACT IS IN PLACE BETWEEN ARTIGUES LANDSCAPE & MAINTEANCE, LLC AND THE TOWN OF KIAWAH ISLAND

Maurice J Artigues III (President/Owner)

10/15/21



#### TOWN OF KIAWAH ISLAND

### **ORDINANCE 2021-14**

# AN ORDINANCE TO AMEND ARTICLE 4, FINANCE AND TAXATION, CHAPTER 3, MUNICIPAL BUSINESS LICENSES

**WHEREAS,** the Town of Kiawah Island, South Carolina enacted a Municipal Code on September 23, 1993, and;

**WHEREAS,** Article 4, Chapter 3 of the Municipal Code provides for Municipal Business Licenses, and;

**WHEREAS,** the Town of Kiawah Island wishes to repeal and replace Article 4 – Finance and Taxation, Chapter 3 – Municipal Business Licenses with Appendix A and Appendix B.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF SAID COUNCIL.

#### Section 1 Purpose

The purpose of this Ordinance is to repeal and replace Article 4 – Finance and Taxation, Chapter 3 – Municipal Business Licenses

#### Section 2 Ordinance

The Town hereby repeals in its entirety Article 4 – Finance and Taxation, Chapter 3 – Municipal Business Licenses

Article 4 – Finance and Taxation, Chapter 3 – Municipal Business Licenses be, and the same is hereby created as follows:

#### Section 4-301. <u>License Required</u>.

Every person engaged or intending to engage in any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, in whole or in part within the limits of the Town of Kiawah Island, South Carolina, is required to pay an annual license tax for the privilege of doing business and obtain a business license as herein provided.

#### Section 4-302. <u>Definitions.</u>

The following words, terms, and phrases, when used in this Ordinance, shall have the meaning ascribed herein. Defined terms are not capitalized when used in this Ordinance unless the context otherwise requires.

"Business" means any business, calling, occupation, profession, or activity engaged in with the object of gain, benefit, or advantage, either directly or indirectly.

"Charitable Organization" means an organization that is determined by the Internal Revenue Service to be exempt from Federal income taxes under 26 U.S.C. Section 501(c)(3), (4), (6), (7), (8), (10) or (19).

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"Charitable Purpose" means a benevolent, philanthropic, patriotic, or eleemosynary purpose that does not result in personal gain to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization.

"Classification" means that division of businesses by NAICS codes subject to the same license rate as determined by a calculated index of ability to pay based on national averages, benefits, equalization of tax burden, relationships of services, or other basis deemed appropriate by the Council.

"Council" means the Town Council of the Town of Kiawah Island.

"Domicile" means a principal place from which the trade or business of a licensee is conducted, directed, or managed. For purposes of this Ordinance, a licensee may be deemed to have more than one domicile.

"Gross Income" means the gross receipts or gross revenue of a business, received or accrued, for one calendar or fiscal year collected or to be collected from business done within the Municipality. If the licensee has a domicile within the Municipality, business done within the Municipality shall include all gross receipts or revenue received or accrued by such licensee. If the licensee does not have a domicile within the Municipality, business done within the Municipality shall include only gross receipts or revenue received or accrued within the Municipality. In all cases, if the licensee pays a business license tax to another county or municipality, then the licensee's gross income for the purpose of computing the tax within the Municipality must be reduced by the amount of revenues or receipts taxed in the other county or municipality and fully reported to the Municipality. Gross income for business license tax purposes shall not include taxes collected for a governmental entity, escrow funds, or funds that are the property of a third party. The value of bartered goods or trade-in merchandise shall be included in gross income. The gross receipts or gross revenues for business license purposes may be verified by inspection of returns and reports filed with the Internal Revenue Service, the South Carolina Department of Revenue, the South Carolina Department of Insurance, or other government agencies. In calculating gross income for certain businesses, the following rules shall apply:

- (a) Gross income for agents shall be calculated on gross commissions received or retained, unless otherwise specified. If commissions are divided with other brokers or agents, then only the amount retained by the broker or agent is considered gross income.
- **(b)** Except as specifically required by S.C. Code § 38-7-20, gross income for insurance companies shall be calculated on gross premiums written.
- (c) Gross income for manufacturers of goods or materials with a location in the Municipality shall be calculated on the lesser of (i) gross revenues or receipts received or accrued from business done at the location, (ii) the amount of income allocated and apportioned to that location by the business for purposes of the business's state income tax return, or (iii) the amount of expenses attributable to the location as a cost center of the business. Licensees reporting gross income under this provision shall have the burden to establish the amount and method of calculation by satisfactory records and proof. Manufacturers include those taxpayers reporting a manufacturing principal business activity code on their federal income tax returns.

"License Official" means a person designated to administer this Ordinance. Notwithstanding the designation of a primary license official, the Municipality may designate one or more alternate license officials to administer particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code.

"Licensee" means the business, the person applying for the license on behalf of the business, an agent or legal representative of the business, a person who receives any part of the net profit of the business, or a person who owns or exercises control of the business.

"Municipality" means the Town of Kiawah Island, South Carolina.

"NAICS" means the North American Industry Classification System for the United States published under the auspices of the Federal Office of Management and Budget.

"Person" means any individual, firm, partnership, limited liability partnership, limited liability company, cooperative non-profit membership, corporation, joint venture, association, estate, trust, business trust, receiver, syndicate, holding company, or other group or combination acting as a unit, in the singular or plural, and the agent or employee having charge or control of a business in the absence of the principal.

#### Section 4-303. <u>Purpose and Duration.</u>

The business license required by this Ordinance is for the purpose of providing such regulation as may be required for the business subject thereto and for the purpose of raising revenue for the general fund through a privilege tax. The licenses year ending on April 30,2022, shall commence on January 1, 2021 and shall run for a 16 period. Thereafter, the licenses periods shall be established as follows. Except as set forth below for business licenses issued to contractors with respect to specific construction projects, each yearly license shall be issued for the twelve-month period of May 1 to April 30. A business license issued for a construction contract may, at the request of the licensee, be stated to expire at the completion of the construction project; provided, any such business license may require that the licensee file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount. The provisions of this Ordinance and the rates herein shall remain in effect from year to year as amended by the Council.

#### Section 4-304. <u>Business License Tax, Refund.</u>

- (a) The required business license tax shall be paid for each business subject hereto according to the applicable rate classification on or before the due date of the 30th day of April in each year, except for those businesses in Rate Class 8 for which a different due date is specified. Late payments shall be subject to penalties as set forth in Section 12 hereof, except that admitted insurance companies may pay before June 1 without penalty.
- (b) A separate license shall be required for each place of business and for each classification or business conducted at one place. If gross income cannot be

separated for classifications at one location, the business license tax shall be computed on the combined gross income for the classification requiring the highest rate. The business license tax must be computed based on the licensee's gross income for the calendar year preceding the due date, for the licensee's twelve-month fiscal year preceding the due date, or on a twelve-month projected income based on the monthly average for a business in operation for less than one year. The business license tax for a new business must be computed on the estimated probable gross income for the balance of the license year. A business license related to construction contract projects may be issued on a per-project basis, at the option of the taxpayer. No refund shall be made for a business that is discontinued.

(c) A licensee that submits a payment greater than the amount owed may request a refund. To be considered, a refund request must be submitted in writing to the Municipality before the June 1 immediately following the April 30 on which the payment was due and must be supported by adequate documentation supporting the refund request. The Municipality shall approve or deny the refund request, and if approved shall issue the refund to the business, within thirty days after receipt of the request.

#### Section 4-305. <u>Registration Required.</u>

- (a) The owner, agent, or legal representative of every business subject to this Ordinance, whether listed in the classification index or not, shall register the business and make application for a business license on or before the due date of each year; provided, a new business shall be required to have a business license prior to operation within the Municipality, and an annexed business shall be required to have a business license within thirty (30) days of the annexation. A license for a bar (NAICS 722410) must be issued in the name of the individual who has been issued the corresponding state alcohol, beer, or wine permit or license and will have actual control and management of the business.
- (b) Application shall be on the then-current standard business license application as established and provided by the Director of the South Carolina Revenue and Fiscal Affairs Office and shall be accompanied by all information about the applicant, the licensee, and the business deemed appropriate to carry out the purpose of this Ordinance by the license official. Applicants may be required to submit copies of portions of state and federal income tax returns reflecting gross receipts and gross revenue figures.
- (c) The applicant shall certify under oath that the information given in the application is true, that the gross income is accurately reported (or estimated for a new business) without any unauthorized deductions, and that all assessments, personal property taxes on business property, and other monies due and payable to the Municipality have been paid.
- (d) The Municipality shall allow application, reporting, calculation, and payment of business license taxes through the business license tax portal hosted and managed by the South Carolina Revenue and Fiscal Affairs Office, subject to the availability and capability thereof. Any limitations in portal availability or capability do not relieve the applicant or Licensee from existing business license or business license tax obligations.

#### Section 4-306. <u>Deductions, Exemptions, and Charitable Organizations.</u>

- (a) No deductions from gross income shall be made except income earned outside of the Municipality on which a license tax is paid by the business to some other municipality or county and fully reported to the Municipality, taxes collected for a governmental entity, or income which cannot be included for computation of the tax pursuant to state or federal law. Properly apportioned income from business in interstate commerce shall be included in the calculation of gross income and is not exempted. The applicant shall have the burden to establish the right to exempt income by satisfactory records and proof.
- (b) No person shall be exempt from the requirements of the Ordinance by reason of the lack of an established place of business within the Municipality, unless exempted by state or federal law. The license official shall determine the appropriate classification for each business in accordance with the latest issue of NAICS. No person shall be exempt from this Ordinance by reason of the payment of any other tax, unless exempted by state law, and no person shall be relieved of liability for payment of any other tax or fee by reason of application of this Ordinance.
- (c) Wholesalers are exempt from business license taxes unless they maintain warehouses or distribution establishments within the Municipality. A wholesale transaction involves a sale to an individual who will resell the goods and includes delivery of the goods to the reseller. It does not include a sale of goods to a user or consumer.
- (d) A charitable organization shall be exempt from the business license tax on its gross income unless it is deemed a business subject to a business license tax on all or part of its gross income as provided in this section. A charitable organization, or any affiliate of a charitable organization, that reports income from for-profit activities or unrelated business income for federal income tax purposes to the Internal Revenue Service shall be deemed a business subject to a business license tax on the part of its gross income from such for-profit activities or unrelated business income.
- (e) A charitable organization shall be deemed a business subject to a business license tax on its total gross income if (1) any net proceeds of operation, after necessary expenses of operation, inure to the benefit of any individual or any entity that is not itself a charitable organization as defined in this Ordinance, or (2) any net proceeds of operation, after necessary expenses of operation, are used for a purpose other than a charitable purpose as defined in this Ordinance. Excess benefits or compensation in any form beyond fair market value to a sponsor, organizer, officer, director, trustee, or person with ultimate control of the organization shall not be deemed a necessary expense of operation.

#### Section 4-307. <u>False Application Unlawful.</u>

It shall be unlawful for any person subject to the provisions of this Ordinance to make a false application for a business license or to give or file, or direct the giving or filing of, any false information with respect to the license or tax required by this Ordinance.

#### Section 4-308. <u>Display and Transfer.</u>

- (a) All persons shall display the license issued to them on the original form provided by the license official in a conspicuous place in the business establishment at the address shown on the license. A transient or non-resident shall carry the license upon his person or in a vehicle used in the business readily available for inspection by any authorized agent of the Municipality.
- (b) A change of address must be reported to the license official within ten (10) days after removal of the business to a new location and the license will be valid at the new address upon written notification by the license official and compliance with zoning and building codes. Failure to obtain the approval of the license official for a change of address shall invalidate the license and subject the licensee to prosecution for doing business without a license. A business license shall not be transferable, and a transfer of controlling interest shall be considered a termination of the old business and the establishment of a new business requiring a new business license, based on old business income.

**Section 4-309. Administration of Ordinance.** The license official shall administer the provisions of this Ordinance, collect business license taxes, issue licenses, make or initiate investigations and audits to ensure compliance, initiate denial or suspension and revocation procedures, report violations to the municipal attorney, assist in prosecution of violators, produce forms, undertake reasonable procedures relating to the administration of this Ordinance, and perform such other duties as may be duly assigned.

#### Section 4-310. <u>Inspection and Audits.</u>

- (a) For the purpose of enforcing the provisions of this Ordinance, the license official or other authorized agent of the Municipality is empowered to enter upon the premises of any person subject to this Ordinance to make inspections and to examine and audit books and records. It shall be unlawful for any such person to fail or refuse to make available the necessary books and records. In the event an audit or inspection reveals that the licensee has filed false information, the costs of the audit shall be added to the correct business license tax and late penalties in addition to other penalties provided herein. Each day of failure to pay the proper amount of business license tax shall constitute a separate offense.
- (b) The license official shall have the authority to make inspections and conduct audits of businesses to ensure compliance with the Ordinance. Financial information obtained by inspections and audits shall not be deemed public records, and the license official shall not release the amount of business license taxes paid or the reported gross income of any person by name without written permission of the licensee, except as authorized by this Ordinance, state or federal law, or proper judicial order. Statistics compiled by classifications are public records.

#### Section 4-311. <u>Assessments, Payment under Protest, Appeal.</u>

(a) Assessments, payments under protest, and appeals of assessment shall be allowed and conducted by the Municipality pursuant to the provisions of S.C. Code § 6-1-410, as amended. In preparing an assessment, the license official may examine such

- records of the business or any other available records as may be appropriate and conduct such investigations and statistical surveys as the license official may deem appropriate to assess a business license tax and penalties as provided herein.
- (b) The license official shall establish a uniform local procedure consistent with S.C. Code § 6-1-410 for hearing an application for adjustment of assessment and issuing a notice of final assessment; provided that for particular types of business licenses, including without limitation for business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality, by separate Ordinance, may establish a different procedure and may delegate one or more rights, duties, and functions hereunder to the Municipal Association of South Carolina.

#### Section 4-312. <u>Delinquent License Taxes, Partial Payment.</u>

- (a) For non-payment of all or any part of the correct business license tax, the license official shall impose and collect a late penalty of five (5%) percent of the unpaid tax for each month or portion thereof after the due date until paid. Penalties shall not be waived. If any business license tax remains unpaid for sixty (60) days after its due date, the license official shall report it to the municipal attorney for appropriate legal action.
- (b) Partial payment may be accepted by the license official to toll imposition of penalties on the portion paid; *provided*, however, no business license shall be issued or renewed until the full amount of the tax due, with penalties, has been paid.

#### Section 4-313. <u>Notices.</u>

The license official may, but shall not be required to, mail written notices that business license taxes are due. If notices are not mailed, there shall be published a notice of the due date in a newspaper of general circulation within the Municipality three (3) times prior to the due date in each year. Failure to receive notice shall not constitute a defense to prosecution for failure to pay the tax due or grounds for waiver of penalties.

**Section 4-314. Denial of License.** The license official may deny a license to an applicant when the license official determines:

- (a) The application is incomplete or contains a misrepresentation, false or misleading statement, or evasion or suppression of a material fact;
- **(b)** The activity for which a license is sought is unlawful or constitutes a public nuisance per se or per accident;
- (c) The applicant, licensee, prior licensee, or the person in control of the business has been convicted within the previous ten years of an offense under a law or Ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- (d) The applicant, licensee, prior licensee, or the person in control of the business has engaged in an unlawful activity or nuisance related to the business or to a similar business in the Municipality or in another jurisdiction;

- (e) The applicant, licensee, prior licensee, or the person in control of the business is delinquent in the payment to the Municipality of any tax or fee;
- (f) A licensee has actual knowledge or notice, or based on the circumstances reasonably should have knowledge or notice, that any person or employee of the licensee has committed a crime of moral turpitude on the business premises, or has permitted any person or employee of the licensee to engage in the unlawful sale of merchandise or prohibited goods on the business premises and has not taken remedial measures necessary to correct such activity; or
- (g) The license for the business or for a similar business of the licensee in the Municipality or another jurisdiction has been denied, suspended, or revoked in the previous license year.

A decision of the license official shall be subject to appeal as herein provided. Denial shall be written with reasons stated.

#### Section 4-315. <u>Suspension or Revocation of License.</u>

When the license official determines:

- (a) A license has been mistakenly or improperly issued or issued contrary to law;
- **(b)** A licensee has breached any condition upon which the license was issued or has failed to comply with the provisions of this Ordinance;
- (c) A licensee has obtained a license through a fraud, misrepresentation, a false or misleading statement, or evasion or suppression of a material fact in the license application;
- (d) A licensee has been convicted within the previous ten years of an offense under a law or Ordinance regulating business, a crime involving dishonest conduct or moral turpitude related to a business or a subject of a business, or an unlawful sale of merchandise or prohibited goods;
- (e) A licensee has engaged in an unlawful activity or nuisance related to the business; or
- (f) A licensee is delinquent in the payment to the Municipality of any tax or fee,

the license official may give written notice to the licensee or the person in control of the business within the Municipality by personal service or mail that the license is suspended pending a single hearing before Council or its designee for the purpose of determining whether the suspension should be upheld and the license should be revoked.

The written notice of suspension and proposed revocation shall state the time and place at which the hearing is to be held and shall contain a brief statement of the reasons for the suspension and proposed revocation and a copy of the applicable provisions of this Ordinance.

#### Section 4-316. Appeals to Council or its Designee.

(a) Except with respect to appeals of assessments under Section 11 hereof, which are governed by S.C. Code § 6-1-410, any person aggrieved by a determination, denial, or suspension and proposed revocation of a business license by the license official may appeal the decision to the Council or its designee by written request stating

- the reasons for appeal, filed with the license official within ten (10) days after service by mail or personal service of the notice of determination, denial, or suspension and proposed revocation.
- (b) A hearing on an appeal from a license denial or other determination of the license official and a hearing on a suspension and proposed revocation shall be held by the Council or its designee within ten (10) business days after receipt of a request for appeal or service of a notice of suspension and proposed revocation. The hearing shall be held upon written notice at a regular or special meeting of the Council, or, if by designee of the Council, at a hearing to be scheduled by the designee. The hearing may be continued to another date by agreement of all parties. At the hearing, all parties shall have the right to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. The proceedings shall be recorded and transcribed at the expense of the party so requesting. The rules of evidence and procedure prescribed by Council or its designee shall govern the hearing. Following the hearing, the Council by majority vote of its members present, or the designee of Council if the hearing is held by the designee, shall render a written decision based on findings of fact and conclusions on application of the standards herein. The written decision shall be served, by personal service or by mail, upon all parties or their representatives and shall constitute the final decision of the Municipality.
- (c) Timely appeal of a decision of Council or its designee does not effectuate a stay of that decision. The decision of the Council or its designee shall be binding and enforceable unless overturned by an applicable appellate court after a due and timely appeal.
- (d) For business licenses issued to businesses subject to business license taxes under Article 20, Chapter 9, Title 58, and Chapters 7 and 45, Title 38, of the South Carolina Code, the Municipality may establish a different procedure by Ordinance.

#### Section 4-317. Consent, franchise, or license required for use of streets.

- (a) It shall be unlawful for any person to construct, install, maintain, or operate in, on, above, or under any street or public place under control of the Municipality any line, pipe, cable, pole, structure, or facility for utilities, communications, cablevision, or other purposes without a consent agreement or franchise agreement issued by the Council by Ordinance that prescribes the term, fees, and conditions for use.
- (b) The annual fee for use of streets or public places authorized by a consent agreement or franchise agreement shall be set by the Ordinance approving the agreement and shall be consistent with limits set by state law. Existing franchise agreements shall continue in effect until expiration dates in the agreements. Franchise and consent fees shall not be in lieu of or be credited against business license taxes unless specifically provided by the franchise or consent agreement.

#### Section 4-318. <u>Confidentiality.</u>

Except in accordance with proper judicial order or as otherwise provided by law, no official or employee of the Municipality may divulge or make known in any manner the amount of income or any financial particulars set forth or disclosed in any report or return required under this Ordinance. Nothing in this section shall be construed to prohibit the publication

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of statistics so classified as to prevent the identification of particular reports or returns. Any license data may be shared with other public officials or employees in the performance of their duties, whether or not those duties relate to enforcement of this Ordinance.

#### Section 4-319. <u>Violations.</u>

Any person violating any provision of this Ordinance shall be deemed guilty of an offense and shall be subject to a fine of up to \$500.00 or imprisonment for not more than thirty (30) days or both, upon conviction. Each day of violation shall be considered a separate offense. Punishment for violation shall not relieve the offender of liability for delinquent taxes, penalties, and costs provided for in this Ordinance.

#### Section 4-320. Severability.

A determination that any portion of this Ordinance is invalid or unenforceable shall not affect the remaining portions. To the extent of any conflict between the provisions of this Ordinance and the provisions of the South Carolina Business License Tax Standardization Act, as codified at S.C. Code §§ 6-1-400 et seq., the standardization act shall control.

#### Section 4-321. <u>Classification and Rates.</u>

- (a) The business license tax for each class of businesses subject to this Ordinance shall be computed in accordance with the current business license rate schedule, designated as <u>Appendix A</u> to this Ordinance, which may be amended from time to time by the Council.
- (b) The current business license class schedule is attached hereto as <u>Appendix B</u>. Hereafter, no later than December 31 of each odd year, the Municipality shall adopt, by Ordinance, the latest standardized business license class schedule as recommended by the Municipal Association of South Carolina and adopted by the Director of the South Carolina Revenue and Fiscal Affairs Office. Upon adoption by the Municipality, the revised business license class schedule shall then be appended to this Ordinance as a replacement <u>Appendix B</u>.
- (c) The classifications included in each rate class are listed with NAICS codes, by sector, sub-sector, group, or industry. The business license class schedule (<u>Appendix B</u>) is a tool for classification and not a limitation on businesses subject to a business license tax. The classification in the most recent version of the business license class schedule adopted by the Council that most specifically identifies the subject business shall be applied to the business. The license official shall have the authority to make the determination of the classification most specifically applicable to a subject business.
- (d) A copy of the class schedule and rate schedule shall be filed in the office of the municipal clerk.

#### Section 3 Effective Date and Duration

This Ordinance shall be effective upon its enactment by Town Council for the Town of Kiawah Island.

# PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF KIAWAH ISLAND ON THIS DAY OF 2021.

	John D. Labriola, Mayor
	Petra S. Reynolds, Town Clerk
ct = U	
1 <sup>st</sup> Reading -	
2 <sup>nd</sup> Reading -	

#### APPENDIX A: BUSINESS LICENSE RATE SCHEDULE

	INCOME: \$0 - \$2,000	INCOME OVER \$2,000
RATE CLASS	BASE RATE	RATE PER \$1,000 OR FRACTION THEREOF
1	\$50.00	\$1.95
2	\$55.00	\$2.15
3	\$60.00	\$2.35
4	\$65.00	\$2.55
5	\$70.00	\$2.75
6	\$75.00	\$2.95
7	\$80.00	\$3.15
8.1	\$70.00	\$2.40
8.2	Set by state statute	
8.3	MASC Telecommunications	
8.4	MASC Insurance	
8.51	\$12.50 plus \$12.50 per machine	
8.52	\$12.50 plus \$180.00 per mac	hine
8.6	\$5 or 12.50 per table plus pe	er \$1,000,
	or fraction, over \$2,000	\$2.00
9.8	Promoters of Events	

#### **NON-RESIDENT RATES**

Unless otherwise specifically provided, all taxes and rates shall be doubled for nonresidents and itinerants having no fixed principal place of business within the Municipality.

#### **DECLINING RATES**

Declining Rates apply in all Classes for gross income in excess of \$1,000,000, unless otherwise specifically provided for in this Ordinance.

Gross Income in \$ Millions	Percent of Class Rate for each additional \$1,000
0 - 1	100%
1-2	90%
2 – 3	80%
3 – 4	70%
OVER 4	60%

#### **CLASS 8 RATES**

Each NAICS number designates a separate subclassification. The businesses in this section are treated as separate and individual subclasses due to provisions of state law, regulatory requirements, service burdens, tax equalization considerations, and other factors that are deemed sufficient to require individually determined rates. In accordance with state law, the Municipality also may provide for reasonable subclassifications for rates, described by an NAICS sector, subsector, or industry, that are based on particularized considerations as needed for economic stimulus or for the enhanced or disproportionate demands on municipal services or infrastructure.

Non-resident rates do not apply except where indicated.

#### 8.1 NAICS 230000 - Contractors, Construction, All Types [Non-resident rates apply].

Resident rates, for contractors having a permanent place of business within the Municipality:

Minimum on first \$2,000 ...... \$ 70.00 PLUS

Each additional 1,000 ..... \$ 2.40

Non-resident rates apply to contractors that do not have a permanent place of business within the Municipality. A trailer at the construction site or structure in which the contractor temporarily resides is not a permanent place of business under this Ordinance.

No contractor shall be issued a business license until all state and municipal qualification examination and trade license requirements have been met. Each contractor shall post a sign in plain view on each job identifying the contractor with the job.

Sub-contractors shall be licensed on the same basis as general or prime contractors for the same job. No deductions shall be made by a general or prime contractor for value of work performed by a sub-contractor.

No contractor shall be issued a business license until all performance and indemnity bonds required by the Building Code have been filed and approved. Zoning permits must be obtained when required by the Zoning Ordinance.

Each prime contractor shall file with the License Official a list of sub-contractors furnishing labor or materials for each project.

For licenses issued on a per-job basis, the total tax for the full amount of the contract shall be paid prior to commencement of work and shall entitle the contractor to complete the job without regard to the normal license expiration date. An amended report shall be filed for each new job and the appropriate additional license fee per \$1,000 of the contract amount shall be paid prior to commencement of new work. Only one base tax shall be paid in a license year. Licensees holding a per-job license shall file, by each April 30 during the continuation of the construction project, a statement of compliance, including but not limited to a revised estimate of the value of the contract. If any revised estimate of the final value of such project exceeds the amount for which the business license was issued, the licensee shall be required to pay a license fee at the then-prevailing rate on the excess amount.

#### **8.2** NAICS 482 – Railroad Companies (See S.C. Code § 12-23-210).

#### 8.3 NAICS 517311, 517312 – Telephone Companies.

With respect to "retail telecommunications services" as defined in S. C. Code § 58-9-2200, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate Ordinance (the "Telecommunications Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to retail telecommunications services are set forth in the Telecommunications Collections Ordinance.

#### 8.4 NAICS 5241 – Insurance Companies:

Independent agents, brokers, their employees are subject to a business license tax based on their natural class. With respect to insurers subject to license fees and taxes under Chapter 7 of Title 38 and to brokers under Chapter 45 of Title 38, the Municipality participates in a collections program administered by the Municipal Association of South Carolina. The Municipality has approved participation in the collections program by separate Ordinance (the "Insurers and Brokers Collections Ordinance"). The rates, terms, conditions, dates, penalties, appeals process, and other details of the business license applicable to insurers and brokers are set forth in the Insurers and Brokers Collections Ordinance.

#### 8.51 NAICS 713120 – Amusement Machines, coin operated (except gambling).

Music machines, juke boxes, kiddy rides, video games, pin tables with levers, and other amusement machines with or without free play feature licensed by SC Department of Revenue pursuant to S.C. Code §12-21-2720(A)(1) and (A)(2) [Type I and Type II].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2746:

Per Machine	\$12.50 PLUS
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to  $\S12-21-2728$  are not subject to Subclass 8.51.

#### 8.52 NAICS 713290 – Amusement Machines, coin operated, non-payout.

Amusement machines of the non-payout type or in-line pin game licensed by SC Department of Revenue pursuant to S.C. Code  $\{12-21-2720(A)(3)\}$  [Type III].

For operation of all machines (not on gross income), pursuant to S.C. Code §12-21-2720(B):

Per Machine	\$180.00 PLUS
D. divine linear	
Business license	\$12.50

Distributors that sell or lease machines and are not licensed by the state as an operator pursuant to §12-21-2728 are not subject to Subclass 8.52.

#### 8.6 NAICS 713990 - Billiard or Pool Rooms, all types.

(A) Pursuant to SC Code § 12-21-2746, license tax of \$5.00 per table measuring less than 3½ feet wide and 7 feet long, and \$12.50 per table longer than that; PLUS, (B) with respect to gross income from the entire business in addition to the tax authorized by state law for each table:

Minimum on first \$2,000 ......\$5.00 or 12.50 per table PLUS

Per \$1,000, or fraction, over \$2,000 \$2.00

#### 9.8 NAICS 711320- Promoters of Performing Arts, Sports, and Similar Events

Promoters of large events, with over 15 attendees, within the corporate limits of the Town of Kiawah Island shall be responsible for obtaining a Special Event Permit for a set fee based upon the estimated and actual total attendance at the event. The Special Event Permit will include licensing of the subcontractors and/or vendors who provide products and services for profit associated with the event.

Promoters of large not-for-profit events, with over 15 attendees, within the corporate limits of the Town of Kiawah Island, are not required to obtain a Special Event Permit; however, each of the subcontractors and/or vendors who provide products and services for profit associated with the event, shall be responsible for obtaining a Town of Kiawah Island Business License.

Attendees	Special Event Permit Fee
16 – 499	\$250
500 – 999	\$500
1,000-2,499	\$1,000
2,500-4,999	\$2,500
5,000-9,999	\$5,000
10,000-19,999	\$10,000
20,000 and over	\$20,000

# Appendix B: Business License Class Schedule by NAICS Code

NAICS Sector/Subsector	Industry Sector	Class
11	Agriculture, forestry, hunting and fishing	3
113	Forestry and logging (including forest nurseries, timber tracts)	2
115	Support activities for agriculture and forestry	1
21	Mining	4
2211	Electric Power Generation, Transmission and Distribution	Franchise
2212	Natural Gas Distribution	Franchise
22	Utilities	1
23	Construction	8.1
31-33	Manufacturing	2
42	Wholesale trade	1
423930	Recyclable Material Merchant Wholesalers (Junk)	8.4A
44-45	Retail trade	1
441	Motor vehicle and parts dealers	1
4411	Automobile Dealers	8.5
4412	Other Motor Vehicle Dealers	8.5
442	Furniture and home furnishing stores	1
443	Electronics and appliance stores	1
444	Building material and garden equipment and supplies dealers	1
445	Food and beverage stores	1
446	Health and personal care stores	2
447	Gasoline stations	1
448	Clothing and accessories stores	2
451	Sporting goods, hobby, book, and music stores	1
452	General merchandise stores	1
453	Miscellaneous store retailers	2
454	Non-store retailers	2

45439	Other Direct Selling Establishments (Peddlers)	8.6
48-49	Transportation and warehousing	2
482	Rail Transportation	8.2
484	Truck Transportation	2
486	Pipeline transportation	1
493	Warehousing and storage facilities	2
51	Information	3
511	Publishing industries (except internet)	2
512	Motion picture and sound recording	1
515	Broadcasting (except internet) and telecommunications	3
517	Telecommunications	3
5171	Wired Telecommunications Carriers	8.3
5172	Wireless Telecommunications Carriers (except Satellite)	8.3
518	Internet service providers, web search portals, and data processing	3
519	Other Information Services	5
52	Finance and insurance	6
522	Credit intermediation and related activities	4
522298	Pawnshops	8.4B
523	Securities, commodity contracts, and other financial investments	7
524	Insurance agents, brokers, and related activities	6
5241	Insurance Carriers	8.7
52421	Insurance Brokers for non-admitted Insurance Carriers	8.7
525	Funds, trusts and other financial vehicles	7
53	Real estate and rental and leasing	7
531	Real estate	7
5311	Lessors of real estate (including mini warehouses and self-storage)	7
532	Rental and leasing services	1
533	Lessors of nonfinancial assets	7
54	Professional, scientific, and technical services	3
5411	Legal Services	7
L		l .

5413	Architectural, engineering, and related services	2
5416-9	Other professional, scientific, and technical services	4
55	Management of companies	6
56	Administrative and support and waste management and remediation services	3
561	Administrative and support services	3
562	Waste management and remediation services	1
61	Educational services	3
62	Health care and social assistance	3
623	Nursing and Residential Care Facility	1
71	Arts, entertainment, and recreation	3
71119	Other Performing Arts Companies (Carnivals and Circuses)	8.9B
712	Museums, Historical Sites, and similar institutions	1
7131	Amusement Parks and Arcades	8.8
7132	Non payout Amusement Machines	8.8
713290	Bingo Halls	8.9A
713990	All Other Amusement and Recreational Industries ( pool tables)	8.10
721	Accommodation	2
722	Food services and drinking places	2
72241	Drinking Places (Alcoholic Beverages)	8.9C
81	Other services	3
811	Repair and maintenance	1
8111	Auto repair and maintenance	2
812	Personal and laundry services	6
813	Religious, grantmaking, civic, professional, and similar organizations	4

This appendix will be updated every odd year based on the latest available IRS statistics.



# **TOWN COUNCIL**

Agenda Item

#### THE TOWN OF KIAWAH ISLAND

## **ORDINANCE 2021-15**

AN ORDINANCE TO AMEND ARTICLE 9 - BUILDING AND BUILDING CODES, CHAPTER 4 - PERMITS, LICENSE AND FEES, DIVISION 2 - LICENSES, SECTION 9-201. - LICENSES

**WHEREAS**, the Town of Kiawah Island Municipal Code currently contains Article 9 - Building and Building Codes, and;

**WHEREAS**, the Town wishes to amend the current Chapter 4- Permits, Licenses and Fees, Division 2 - Licenses, Sections 9-201. - Licenses

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF SAID COUNCIL.

#### Section 1 Purpose

The purpose of this Ordinance is to amend Article 9 - Buildings and Building Codes, Chapter 1 - General, Division 2 - Licenses, Sections 9-201. - Licenses

#### Section 2 Ordinance

Article 9 - Buildings and Building Codes, Chapter 4 - Permits, License and Fees, Division 2 - Licenses, Section 9-201. - Licenses is hereby amended as follows:

#### Sec. 9-201. - Licenses

- (a) Any person or firm wishing to engage in professional design services shall be required to be licensed by the South Carolina Department of Labor, Licensing and Regulations.
  - 1. All design professionals are required to seal their plan sheets before submitting them for review. Professional seals shall be signed and dated on each page. If the company is a firm, each plan page shall be accompanied by the firm seal.
  - 2. Any professional designer who is under investigation by the SC Department of Investigations a Division of The South Carolina Department of Labor, Licensing and Regulations shall be suspended from further plan submittals until such time a decision has been made by either the Board of Architectural Examiners and or the Board of Engineers and Surveyors.
- (c)(b) Any person or firm that wishes to obtain building permits for work within the Town of Kiawah Island is required to possess a valid state contractor's license issued by South Carolina Labor, Licensing and Regulation Residential Builders Commission and or the Contractor's Licensing Board.

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- (d)(c) Any person or firm engaged in the business of performing plumbing, electrical or mechanical work within the Town of Kiawah Island shall possess a valid town business license and a valid South Carolina mechanical contractor license, a valid South Carolina residential specialty license, and a Town of Kiawah Island contractor's license for the type of work to be permitted.
- (e)(d) Contractors duly licensed by the State of South Carolina shall also obtain a contractor's license from the Town of Kiawah Island.
- (f) Any contractor under investigation by the South Carolina Department of Investigations, a Division of The South Carolina Department of Labor, Licensing and Regulations shall be suspended from submitting permits to the town until such time a decision has been made by either the Residential Builders Commission, and or Contractor's Licensing Board.
- (g)(e) Commencing to perform construction activities on properties within the Town of Kiawah Island when the undertaking is \$200.00 or more prior to obtaining a contractor's license from the State of South Carolina and a permit from the Town of Kiawah Island shall constitute an ordinance violation and shall result in a fine not to exceed \$500.00. Each day the ordinance violation continues constitutes a separate offense.

#### Section 3 Severability

If any part of this Ordinance is held to be unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, or any provisions thereof, is held to be inapplicable to any person, group of persons, property, kind property, circumstances or set of circumstances, such holding shall not affect the circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances

#### Section 4 Effective Date and Duration

This Ordinance shall be effective upon its enactment by Town Council for the Town of Kiawah Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF KIAWAH ISLAND ON THIS DAY OF 2021.

1st Reading -



# **TOWN COUNCIL**

Agenda Item

#### THE TOWN OF KIAWAH ISLAND

### **ORDINANCE 2021-16**

AN ORDINANCE TO AMEND ARTICLE 14 – GENERAL REGULATIONS, CHAPTER 5 - RENTAL APPLICATIONS AND REGULATIONS, SECTION 14-504 – RENTAL BUSINESS LICENSE, SECTION 14-505 - SHORT-TERM RENTAL PROPERTY CAPS, SECTION 14-509 - REVOCATION OR SUSPENSION OF A SHORT-TERM RENTAL BUSINESS LICENSE, SECTION 14-510 – APPEALS TO TOWN COUNCIL

**WHEREAS**, the Town of Kiawah Island Municipal Code currently contains Article 14 – General Regulations, and;

**WHEREAS**, the Town wishes to amend the current Chapter 5 - Rental Applications and Regulations, Section 14-504 - Rental Business License, Section 14-505 - Short-Term Rental Property Caps, Section 14-509 - Revocation or Suspension of a Short-Term Rental Business License, Section 14-510 – Appeals to Town Council.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE COUNCIL OF THE TOWN OF KIAWAH ISLAND, SOUTH CAROLINA, AND IT IS ORDAINED BY THE AUTHORITY OF SAID COUNCIL.

### Section 1 Purpose

The purpose of this Ordinance is to amend Article 14 – General Regulations, Chapter 5 - Rental Applications and Regulations, Section 14-504 - Rental Business License, Section 14-505 - Short-Term Rental Property Caps, Section 14-509 - Revocation or Suspension of a Short-Term Rental Business License, Section 14-510 – Appeals to Town Council.

#### Section 2 Ordinance

Article 14 – General Regulations, Chapter 5 - Rental Applications and Regulations, Section 14-504 – Rental Business License is hereby amended as follows:

#### Sec. 14-504. – Rental Business License

- (a) Article 4 Finance and Taxation, Chapter 3. Municipal Business Licenses, regulates all business licenses. The following additional regulations apply specifically to STR business license.
- (b) A short-term Rental Business License expires annually on December 31<sup>st</sup> April 30th. License holdersmust renew each calendar year and have until February 28<sup>th</sup> April 30th of the following year to renewtheir license without penalty. As of March May 1<sup>st</sup>, if the holder of an expired license submits a renewal request, one of the following conditions shall apply:

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- (1) If the property is in an R1 or R2 zoning district, and the License Cap in Table 15-805.1 has not been reached, the license is renewable subject to a \$1000 late fee, plus all applicable fees.
- (2) For properties in all other zones, the license is renewable subject to a \$1000 late fee, plus all applicable fees. If the property is in an R1 or R2 zoning district subject to caps, and the Town is unable to issue a STR business license solely due to the percentage Caps established herein, (see 14-505.1), a new application can still be filed, and the applicant will be placed on a waiting list. If a permit becomes available, the Town will notify the applicant who has been on the waiting list the longest and allow him/her 7 business days to provide the Town with any and all information necessary toensure the application is current and otherwise complies with the ordinance. If the applicant fails to respond and/or provide current information within 7 business days, the Town shall remove the applicant from the waiting list and repeat the process until a STR business license, or PLL, has been issued, or all of the applicants on the waiting list have been notified.
- (3) Late renewals (after the close of business on February 28<sup>th</sup>April 30th), are not permitted for non-conforming use properties previously holding a valid STR business license, including Destination or Vacation Clubs.
- **(c)** A license holder shall provide proof of accommodation tax payments for the previous year at the time of license renewal. Failure to pay all required accommodation taxes constitutes grounds to not renew a rental business license.
- (d) All fees related to STR business licenses must be paid in full at the time of application. Upon the closing of the license, the licensee is responsible for notifying the Town and properly closing their account.

Article 14 – General Regulations, Chapter 5 - Rental Applications and Regulations, Section 14-505 - Short-Term Rental Property Caps is hereby amended as follows:

#### Sec. 14-505. - Short-Term Rental Property Caps

Short term rental Caps are established in the R1 zoning district and identified R2 zoning districts(see Table 14-505.1 for details). The limitations and requirements of this section apply to short- term rental properties in the Town's R1 and R2\* zoning districts.

- (1) <u>License Caps</u>. Licenses for rental properties shall be distributed on a first-come, first-serve basis. Active licenses expire annually on <u>December 31<sup>st</sup>April 30th</u> of each year. Applications received after <u>February 28<sup>th</sup>April 30th</u> are subject to late fees as defined in Section.14-504(b)(1)(2).
  - **a.** Properties holding a rental business license will have first preference torenew by February 28<sup>th</sup>April 30th to maintain their license, as long as the license is in good standing with the Town.
  - **b.** Available licenses are subject to the percentage of rental caps allowed within the

zoning district, pursuant to Table 14-505.1, Rental Property Zoning Caps.

- c. If a license cap is reached within the R1/R2\* zoning district, the applicant will be placed on a waiting list until a license becomes available, consistent with provisions in Section 14-504(b)(3).
- d. STR or PLL licenses are not transferable. In the event of the transfer of property ownership, including the transfer of interests in corporations or partnerships that own a licensed property, the new owner may apply for anew STR or PLL license, subject to Section 14-502 and all other provisions of this ordinance. Exception: Intra-family transfers of property can include the transfer of a STR or PLL license.
- **e.** A license may be subject to expiration or may not be renewed should an owner report <\$3,000 of annual rental revenue. In the event of annual revenue below \$3,000, an owner will need to demonstrate the short-term rental property was available and advertised for rental throughout the previous year.
- (2) In calculating the number of rental business licenses available in any calendar license year, the calculation will be based on the percentages defined in Table 14-505.1

Table 14-505.1: Rental Property Zoning Caps			
Zoning District	R-1 and R-2*	All other R-2	R-3
Maximum % of STR properties allowed	20%	No Limit	No Limit

Rental percentages are a ratio of rental licenses (including PLL's) to developed lotswithin the R1 zoning district, and the specific R2 zoned areas identified below. Developed lot numbers are defined from the County Assessor's Office as of December 31 of the prior calendar year.

\*R-2 districts include: Indigo Park, Ocean Oaks, Ocean Park, and Silver Moss, Osprey Point (Club Cottage Lane, Marsh Cottage Lane, and Shell Creek Landing)

- (3) Destination Clubs and Private Vacation Clubs are not permitted by the Town's zoning regulations in Residential Zones R1, R2, and R3 unless the Destination Club complies with the following requirements:
  - **a.** The Destination Club obtains a STR business license;
  - **b.** The Destination Club pays all required State Sales Tax (8%), State (2%), County (2%) and Local Accommodation (1%) Taxes on gross receipts collected from STR's;
  - **c.** The Destination Club complies with all other rules and regulations applicable to STR's;
  - **d.** The Destination Club provides no commercial services on the subjectproperty; and

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Ordinance 2021-16

**e.** The owner of the property obtains a business license.

Any applicable properties in R1, R2, or R3 holding a valid STR business license as of the effective date of this ordinance shall be grandfathered and included in calculating the licensecap, subject to the following conditions:

- **a.** Residential Business Licenses expire as of December 31<sup>st</sup>April 30th of each year. The license holder has until February 28<sup>th</sup>April 30th of the following year to renew. Failure torenew by the close of business on February 28<sup>th</sup>April 30th will result in the expiration of the license. No late renewals will be permitted for non-conforming use properties, including Destination Clubs and Vacation Clubs.
- **b.** All grandfathered properties shall remain subject to the requirements of this Chapter as STRs.
- **c.** Destination Clubs and Private Vacations Clubs are permitted in Zones R2/Commercial, R3/Commercial, RST-1, RST-2, RST-1/R3, R-2(DA), R- 3(DA), and RST-2(DA) are subject to the approval of uses prescribed in the Zoning Ordinance and the requirements of this Chapter as STRs.

Article 14 – General Regulations, Chapter 5 - Rental Applications and Regulations, Section 14-509 - Revocation or suspension of a short-term business license is hereby amended as follows:

#### Sec. 14-509. Revocation or suspension of a short-term rental business license.

In addition to applicable fines and penalties:

- (1) The failure of the rental business licensee to comply with any sections of this chapter shall constitute grounds for the suspension or revocation of the license. Any action to suspend or revoke the license shall be conducted by the license official treasurer or designee in accordance with municipal code, chapter 3, municipal business license, section 4-315.
- (2) Any property with three violations of this chapter during any 12-month rolling period and found guilty by admissions or by the municipal judge will be considered cause for license revocation. The owner or agent may reapply for a new STR license no sooner than 12 months after revocation, subject to all provisions contained herein.

On receipt of notice of revocation or suspension, the owner (or authorized agent) shall immediately stop the operation of the short-term rental establishment. All advertisements for future short-term rentals shall immediately cease. If such property is advertised or occupied by short-term renters after the revocation or suspension of the STR license, fines shall be levied against the owner and agent.

Article 14 – General Regulations, Chapter 5 - Rental Applications and Regulations, Section 14-510 - Appeals to Town Council is hereby amended as follows:

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#### Sec. 14-510. Appeals to Town Council.

- (a) A person aggrieved by the town's decision to revoke, suspend, or deny a rental business license may appeal the decision in accordance with Municipal Code, Chapter 3, Municipal Business License, Section 4-316. to the town council. The appeal must be filed in writing within 30 calendar days with the town clerk after the revocation, suspension, or denial and it shall set forth a concise statement of the reasons for the appeal. Timely filing of an appeal shall stay the revocation, suspension, or denial, pending a decision on the appeal by the Town Council.
- (b) The Town Council shall consider the appeal in an open hearing at a regular or special meeting within 30 calendar days after receipt of a request unless otherwise agreed to, in writing, by the town and the aggrieved party.

#### Section 3 Severability

If any part of this Ordinance is held to be unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, or any provisions thereof, is held to be inapplicable to any person, group of persons, property, kind property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances

#### Section 4 Effective Date and Duration

This Ordinance shall be effective upon its enactment by Town Council for the Town of Kiawah Island.

PASSED, APPROVED, AND ADOPTED BY THE COUNCIL FOR THE TOWN OF KIAWAH ISLAND ON THIS DAY OF 2021.

	John D. Labriola, Mayor	
	Petra S. Reynolds, Town Clerk	
1 <sup>st</sup> Reading -		
2 <sup>nd</sup> Reading -		

5 Ordinance 2021-16