



# Town of *Kiawah Island*®

## Mayor

John. D. Labriola

## Council Members

F. Daniel Prickett

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John Moffitt

Scott M. Parker, MD

## Town Administrator

Stephanie Monroe Tillerson

## TOWN COUNCIL SPECIAL CALL WORKSHOP Municipal Center Council Chambers February 8, 2022; 10:00 am

### AGENDA

- I. Call to Order:
- II. Old Business:
  - A. Annexation and Zoning Process Discussion
- III. Adjournment:

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# ANNEXATION POLICY PLAN & PROCEDURES MANUAL



Town of Kiawah Island  
Effective Date:

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## CHAPTER 1 | ANNEXATION AUTHORITY AND METHODS

### 1.1 AUTHORITY

Changing the corporate limits of a municipality is authorized by S.C. Code Ann. §§ 5-3-10 through 5-3-315, as amended.

### 1.2 TOWN'S COMPREHENSIVE PLAN

The Town of Kiawah Island Comprehensive Plan (the Plan) establishes the annexation goal set forth in Section 3 (g) – Land Use Element. The Plan lists five goals to help the Town further realize its Vision when evaluating proposals for change to include thoroughly evaluating any annexation proposals to ensure the protection of environmentally sensitive areas, is consistent with the Town's Vision, the spirit of the Town's Comprehensive Plan, and enhance the character of Kiawah Island.

### 1.3 INITIATION OF PETITION BY MUNICIPALITY

Consistent with the SC Code of Laws title 5, Chapter 3, the Town of Kiawah regards annexation as a voluntary process and does not initiate annexations except for property owned by the Town.

### 1.4 ANNEXATION METHODS

Three methods of annexation for privately owned property are authorized:

- 100 percent property owner petition and ordinance method [S.C. Code Ann. §5-3-150(3)]
- 75 percent freeholder petition and ordinance method [S.C. Code Ann. §5-3-150(1)]
- 25 percent elector petition and election method [S.C. Code Ann. §5-3-300 – 315]

Annexations of corporate, church or publicly owned property are dealt with in several statutes tailored to fit the type of property and body which holds title. Annexation of the following types of property may be accomplished by petition or consent of the owner and adoption of an ordinance. More information can be found in the S.C. Code Ann. §§ 5-3-10 through 5-3-315.

These annexation procedures are treated individually in detail in the following pages.

## CHAPTER 2 | ANNEXATION ASSESSMENT

### 2.1 BEST INTEREST OF MUNICIPALITY

Annexation is one of the most powerful tools available to municipalities for directing and influencing their future growth. Annexation is the process by which the municipality extends its municipal services, regulations, voting privileges, and fees to conduct business in the municipality to new territory. The municipality annexes to provide municipal services to developed and developing areas and to exercise regulatory authority necessary to protect public health, safety, and general welfare. Annexation is also a means of ensuring that residents and businesses outside the municipal corporate limits who benefit from access to municipal facilities and services share the burden associated with constructing and maintaining these facilities and services.

Annexation and the imposition of land development regulations may also be used as a growth management tool to implement the Comprehensive Plan. Annexation extends the Town's extraterritorial jurisdiction, enabling the Town to regulate the subdivision and development of land over an expanded area. It is advisable for the Town of Kiawah Island to take a proactive yet responsible approach to annexing lands adjacent to the corporate limits as a means to manage peripheral growth and to have regulatory control over the type, scale and density of development.

Natural areas located adjacent to the municipal limits of Kiawah if not now, then sometime in the future, may be expecting some level of services to the residents within the area. However, being able to effectively plan for those services is often limited by our current boundaries.

In some cases, annexation is contingent on the property owners and the Town agreeing to certain terms or conditions. Issues could be certain zoning classification of property, or proposed development plans.

Sometimes, the Town may enter into pre-annexation agreements with property owners that may not be annexed for some time. These agreements, which are binding for XX years, is a commitment between both the Town and the property owner to annexation according to agree upon terms.

After the Town and property owner agree to all terms, the Town Council will review and adopt an ordinance authorizing the Mayor to sign the agreement. At this point, the property owner will either annex or the agreement will be recorded with the County and used when the property becomes contiguous to the Town limits.

### 2.2 FEASIBILITY STUDY AND COST/BENEFIT ANALYSIS

The purpose of a feasibility study is to objectively and rationally review and examine strengths and weaknesses of the proposed annexation. The Town requires the preparation of a Feasibility Study and Cost/Benefit Analysis (Study) for all annexation applications. The Study may be prepared by Staff, or for complex annexation petitions, Town Council may authorize Staff to contract a consultant to complete the Study. In the event a consultant is contracted, the cost for the Study will be the responsibility of the applicant and due upon selection of a consultant. The Study will be completed prior to the first Public Hearing for presentation at that meeting. The Study should address public services the Town will assume or provide, fees required for those services, an estimate of revenue to the Town, and a timetable for services. The Study should address, but not be limited to, the following:

- Inventory of existing outside services;
- Identification of the provider of each service, contractual obligations, including availability of service if desired after annexation;
- If any part of the area to be annexed is currently served by a special service district, the anticipated cost to the Town of complying with S.C. Code Ann. §§ 5-3-310 through 5-3-315, as amended; Identification of services to be assumed or provided by the Town;

- Identification of efficient service areas and areas which cannot be fully served;
- Determination of the level of additional services needed;
- Determination of the most cost effective way to provide services to the area;
- Projected timetable for provision of services;
- Revenues needed to support services;
- Estimated revenues from taxes (e.g., accommodation and hospitality), fees and service charges;
- Comparison of cost to property owners before and after annexation;
- Identification of burdens and benefits of annexation; and
- Projected level of fees required to support services.

### **2.3 GUIDING PRINCIPLES FOR ASSESSMENT OF ANNEXATIONS**

Annexation should be of mutual benefit to the annexation petitioner(s) as well as the Town of Kiawah and its citizens in terms of cost and services received. Each Annexation Petition involves many unique factors and will be reviewed based upon its own individual merits. The Town sets forth the following guiding principles and considerations for assessing annexation petition(s):

- Meets the principles, policies, and procedures set forth in this Manual;
- Annexation of the property is in the best interest of the Town and the community;
- Avoids creating new enclaves (or donut holes) in the Town of Kiawah Municipal Boundary;
- Consistency with the recommendations of the Town of Kiawah Comprehensive Plan including the Future Annexation Map;
- Appropriateness of requested zoning district(s), land use regulations, development standards and environmental regulations;
- Consideration of the costs, benefits and estimated revenues for a proposed annexation before action is taken on the petition.
- Annexation will not create a measurably reduced level of service(s) provided to existing community and property owners;
- Fiscal impact of providing municipal services;
- Consideration of the annexation area's existing condition of utilities, infrastructure and future needs for expansion improvements;
- Full impact that annexation will have on law enforcement;
- Demonstrates potential for the diversification of the economic base and job opportunities;
- Consideration and utilization of Development Agreements for the proposed annexation area when applicable;
- Petitioners understanding of all potential costs/benefits associated with annexation; and
- Input provided by the public and affected agencies during the review process.

## CHAPTER 3 | ANNEXATION GENERAL PROVISIONS

General state statutory provisions applicable to annexations as they currently stand are described below. Each authorized annexation method is explained individually including the statutory legal and procedural requirements, a checklist of steps necessary to complete the process is provided, as are sample forms where appropriate. The applicable state statutes may be amended and should be reviewed for such amendments.

### 3.1 CONTIGUITY

Property annexed pursuant to S.C. Code Ann. § 5-3-150 or § 5-3-300 must be “contiguous” to the annexing municipality. “Contiguous” is defined by S.C. Code Ann. § 5-3-305, as amended, and means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

### 3.2 PETITIONS

For 75 percent and 25 percent annexations petitions, the petition must be dated before the first signature is affixed. All necessary signatures must be obtained within six months from the date of the petition. The petition and all signatures are open for public inspection at any time.

### 3.3 PROPERTY OWNER

For 100 percent petitions, “property owner” means all persons or entities owning real property.

### 3.4 FREEHOLDER

For 100 percent petition, 75 percent petition, 25 percent petition, and reduction of municipal boundaries under S.C. Code Ann. § 5-3-280, a “freeholder” is any person at least 18 years of age, and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth (1/10) interest in a single tract and whose name appears on the county tax records as an owner of real estate. S.C. Code Ann. § 5-3-240.

A property owner is counted as one (1) freeholder regardless of the number of parcels of land owned by that freeholder in the area to be annexed.

### 3.5 ELECTOR

For the 25 percent elector method, an “elector” is a registered qualified voter who is a resident in the area proposed for annexation.

### 3.6 ZONING

Zoning of the proposed annexation is an important factor in the review and analysis of an annexation petition. Therefore, a Zoning Map Amendment application requesting the Zoning District(s) for the annexation area shall be submitted concurrently with the annexation petition.

### 3.7 CONCURRENT APPLICATIONS

Depending on the requested zoning of the annexation, other applications may be required. These applications shall be submitted concurrently with the annexation and zoning map amendment



applications to allow for a complete and thorough review and consideration. These applications include Development Agreement, Concept Plan, and/or Initial Master Plan as applicable.

### **3.8 ASSESSED VALUE OF REAL PROPERTY**

- 25 Percent Method. The assessed value of the real property of any single freeholder, shall not at the time of a proposed annexation exceed 25 percent of the assessed value of real property of the existing area of the municipality. S.C. Code Ann. § 5-3-235. This limitation does not apply to any other methods of annexation. S.C. Code Ann. § 5-3-300(l) contains opt-out provisions for the owner of 25 percent or more of the assessed value of land in the area to be annexed and for the owner of agricultural property.
- 75 Percent Method. Annexation pursuant to the 75 percent petition and ordinance method in S.C. Code Ann. § 5-3-150(1) requires signatures of owners of 75 percent of freeholders owning at least 75 percent of assessed value of property in the area to be annexed. When reassessment occurs after the petition is started but before it is acted upon, it appears from the definition of freeholder in S.C. Code Ann. § 5-3-240 that the assessed value as of the date of the petition should be used.

### **3.9 PUBLIC PROCESS**

Public notification and involvement throughout the annexation process is an important part of the annexation process. Therefore, annexation applications are subject to Public Notice requirements as follows:

- Public Notification. Upon receipt of an application for approval that requires a public hearing, the Town shall fix a reasonable time for the hearing. Public notice of the public hearing must be published at least thirty (30) days prior to the hearing date in a newspaper of general circulation in the community. In addition, public notices shall also be electronically published on the Town website.
- Posting of Property. Where the public hearing will be for a specific site, public notice signs shall be placed on the subject property as per the following method:
  - The Planning Manager or its designee shall post an adequate number of “notice of public hearing” signs on the property at least thirty (30) days prior to the date of the public hearing. All signs shall be removed within thirty (30) days after the public hearing.
  - Only official Town signs shall be posted and shall be placed in conspicuous locations on the subject property(s), with at least one sign placed at a location visible from a public thoroughfare.
- Mailing. To assure adjacent property owners and affected public entities are provided adequate public notice of the application, no less than thirty (30) days prior to the public hearing, the Applicant shall send public notification to all owners of real property within five hundred (500) feet of the subject property as well as the Charleston County Administrator, St. Johns Fire District, and Public Service providers. A sample public hearing notification letter including a map, complete legal description of the area to be annexed, and an official listing of adjacent property owners and other agencies shall be provided to the Applicant by Town Staff. No less than fifteen (15) days prior to the public hearing, the Applicant shall submit to the Planning Manager or its designee, a notarized, stamped and sealed Affidavit of Compliance. The Affidavit must contain a list of all property owners contacted.

- Public Notice Compliance. Failure to comply with the public notice requirements shall result in the removal of the application from the public hearing agenda.

### **3.10 ELECTION PRE-CLEARANCE FOR 25 PERCENT METHOD**

If the election(s) initiated by 25 percent petition pursuant to S.C. Code Ann. § 5-3-300 will be held on a date which has not already been cleared under § 5 of the Voting Rights Act for a county election, it may be necessary to submit the proposed date to the U.S. Attorney General and/or the Department of Justice before giving public notice of the election.

### **3.11 ELECTION TIME LIMITATION**

Annexations are deemed complete upon the adoption of an ordinance. When an annexation is defeated in an election by voters within the Town or the proposed annexed territory, another annexation election in the territory cannot be initiated within twenty-four (24) months after the election. S.C. Code Ann. § 5-3-210.

### **3.12 ORDINANCES**

Ordinances for the incorporation of annexed property into the Town of Kiawah Island necessarily incorporate the amendment of a zoning map and therefore must follow the procedure set forth in S.C. Code Ann. § 6-29-760 and, therefore, require a public hearing, regardless of annexation method. (Property owned by the Town or adjacent county can be annexed by resolution, so these provisions are not applicable in that situation. S.C. Code Ann. § 5-3-100) Additionally, no member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance.

### **3.13 APPEALS**

When the limits of a municipality are ordered extended, no contest thereabout shall be allowed unless the person interested therein files, within sixty (60) days after the result has been published or declared, with both the clerk of the municipality and the clerk of court of the county in which the municipality is located, a notice of his intention to contest the annexation, nor unless, within ninety (90) days from the time the result has been published or declared, an action is commenced in the Charleston County Court of Common Pleas and the original summons and complaint is filed with the Charleston County Clerk of Court. S.C. Code Ann. § 5-3-270.

## CHAPTER 4 | ANNEXATION PETITION APPLICATION

### 4.1 APPLICATION MINIMUM SUBMITTAL REQUIREMENTS

Applications for all annexation petition applications are required to provide the following upon submittal:

- Completed Annexation Application.
- Completed Annexation Petition (type will depend on the annexation method chosen by the applicant).
- Copy(s) of all documents, recorded with the Charleston County Register of Deeds, including:
  - Deed(s);
  - Plat(s);
  - Covenants and Restriction(s);
  - Easement(s); and
  - Agreement(s).
- Location Map of proposed Annexation Area showing:
  - Existing Structures;
  - Current Charleston County Zoning District(s); and
  - Adjacent Property Owners.
- Annexation Narrative detailing:
  - Reason for annexation request and anticipated benefits;
  - Parcel numbers and acreage of each;
  - Contact information for property owner(s), applicant, attorney and any other applicable consultant/firm;
  - Existing structure(s);
  - Current Special Districts (overlay, tax, and/or conservation);
  - Current Charleston County Zoning District(s) and Land Use(s);
  - Proposed Zoning District(s) and Land Use(s);
  - Current versus Proposed Zoning District and Land Use Comparison;
  - Consistency with Comprehensive Plan, Future Annexation Area Map, and Future Land Use Map;
  - Estimate of current population of Annexation Area; and
  - Current utility service providers.
- Photographs of:
  - Existing Structures and Land Use; and
  - Adjacent Property.
- Parcel History letter from Charleston County providing:
  - Application(s) submitted for the past 10 years and their status; and
  - Any zoning, land development, building, or county code violations for the past 10 years and their status.
- Submittal of Zoning Map Amendment Application.
- Submittal of concurrent applications, as applicable, including:
  - Development Agreement;
  - Concept Plan; and/or
  - Planned Unit Development Master Plan.
- Application Fee made payable to the Town of Kiawah Island.

## CHAPTER 5 | ANNEXATION NARRATIVES

The Town recognizes that any annexation necessarily includes a change to the Town’s Zoning Map. Therefore, any annexation necessarily requires compliance with State laws for amending zoning maps, S.C. Code Ann. § 6-29-760, which includes notice, a public hearing, and additional requirements. The Procedures set forth herein are intended to incorporate the process for amending zoning maps into the annexation process and comply with State law for both processes.

### 5.1 100 PERCENT PETITION AND ORDINANCE METHOD

Annexation of any area or property which is contiguous to the Town may be initiated by filing a petition signed by all persons or entities owning real estate in the area requesting annexation. Upon agreement to accept the petition and annex the area and enactment of an ordinance by Town Council declaring the area annexed, the annexation is complete. S.C. Code Ann. § 5-3-150(3).

#### Procedure

<b>Procedure Step 1. Pre-Application Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Prior to the filing of an Annexation Application, the Applicant is required to consult with the Planning Manager or its designee at a Pre-Application Meeting for comments and advice on the appropriate application process and the required procedures, specifications, and applicable standards required by Town of Kiawah applicable ordinances.	
<b>Step 2. Application Check-In Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Upon receiving input from Staff at the Pre-Application Meeting, the Applicant shall submit the Annexation Application and required submittal materials during a mandatory Application Check-In Meeting where the Planning Manager or its designee will review the submission for completeness.	
<b>Step 3. Review by Planning Manager</b>	<b>Staff</b>
If the Planning Manager determines that the Annexation Application is complete, the application shall advance as prescribed in the Town of Kiawah Island Annexation Policy and Procedure Manual.	
<b>Step 4. Drafting of Annexation Map</b>	<b>Staff</b>
Staff will assist the Petitioner in the drafting of the final annexation map.	
<b>Step 5. Town Council Intent to Annex Initial Briefing and Acceptance of Annexation Petition</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Town Council will consider the Applicant’s “intent to annex” for the annexation petition for an initial briefing or “intent to annex”. Town Council discussion items for the initial meeting include development agreement (if applicable) and recommended zoning. This initial meeting allows Town Council to review the “intent to annex” and to initiate the review process to determine if the annexation of property into the Town would be mutually beneficial to all. The Mayor may create an Annexation Ad Hoc Committee. If Town Council desires to consider the proposed annexation, Council may accept for consideration via the review process herein the annexation petition by majority vote and forward the request to the Annexation Ad Hoc, if applicable.	
<b>Step 6. Annexation Ad Hoc Committee</b>	<b>Applicant/Petitioner, Staff &amp; Negotiating Committee</b>
If applicable, per Town Council direction, the Annexation Ad Hoc Committee shall conduct meetings until the terms of the development agreement or other negotiations are complete. The application(s) then proceed to Planning Commission for a workshop followed by Public Hearing and recommendation to Town Council.	
<b>Step 7. Planning Commission Public Workshop</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
In order to inform the public of the steps, preliminary costs and benefits, as well as a tentative timetable, Planning Commission will hold a public workshop. This will be a forum for the voicing of any concerns or comments. Staff and Planning Commission will also address the Comprehensive Plan, Future Land Use Map and Zoning Districts.	
<b>Step 8. Drafting of Feasibility Study</b>	<b>Staff</b>
Dependent on the size and scope of the annexation, the Town Administrator will initiate a formal cost/benefit analysis or outline the scope of the study, request that bids be submitted for its completion, and a consultant selected. As noted above, this cost may be passed on to the Applicant/Petitioner.	

<b>Step 9. Public Notification</b>	<b>Applicant/Petitioner &amp; Staff</b>
The Applicant sends notification letters to each adjacent property owner and submits the registered mail receipts to the Town no later than thirty (30) days prior to the Planning Commission meeting.	
<b>Step 10. Planning Commission Public Hearing and Recommendation</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
The Planning Commission hold a public hearing and make recommendations to Town Council which will be forwarded to Town Council for consideration.	
<b>Step 11. Town Council Ordinance 1st Reading</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Town Council will hold First Reading of the ordinance for the Annexation Petition, Zoning Map Amendment, and any concurrent applications.	
<b>Step 12. Public Notification</b>	<b>Applicant/Petitioner &amp; Staff</b>
The Applicant sends notification letters to each adjacent property owner and submits a copy the same to the Town no later than thirty (30) days prior to the Town Council meeting.	
<b>Step 13. Town Council Public Hearing &amp; Ordinance 2nd and Final Reading</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Town Council will hold a Public Hearing and 2nd and Final Reading of the Ordinances for the Annexation Petition, Zoning Map Amendment, and any concurrent applications.	
<b>Step 14. Annexation Notifications</b>	<b>Staff</b>
Upon adoption of the annexation petition by ordinance, the Town shall file written notice in accordance with this Manual.	

## 5.2 75 PETITION AND ORDINANCE METHOD

Annexation of any area or property which is contiguous to the Town may be initiated by filing a petition signed by 75 percent or more of the freeholders owning at least 75 percent of the assessed value of property in the area to be annexed. The petition must be dated before the first signature is affixed and all necessary signatures must be obtained within six months from the date of the petition. The petition and all signatures are open for public inspection at any time. Upon agreement to accept the petition and annex the area, compliance with required procedures, and enactment of an ordinance by the governing body declaring the area annexed, the annexation is complete. S.C. Code Ann. § 5-3-150(3) & S.C. Code Ann. § 5-3-150(1).

### Procedure

<b>Procedure Step 1. Pre-Application Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Prior to the filing of an Annexation Application, the Applicant is required to consult with the Planning Manager or its designee at a Pre-Application Meeting for comments and advice on the appropriate application process and the required procedures, specifications, and applicable standards required by Town of Kiawah Island applicable ordinances.	
<b>Step 2. Application Check-In Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Upon receiving input from Staff at the Pre-Application Meeting, the Applicant shall submit the Annexation Application and required submittal materials during a mandatory Application Check-In Meeting where the Planning Manager or its designee will review the submission for completeness.	
<b>Step 3. Review by Planning Manager</b>	<b>Staff</b>
If the Planning Manager determines that the Annexation Application is complete, the application shall advance as prescribed in the Town of Kiawah Island Annexation Policy Plan and Procedure Manual.	
<b>Step 4. Drafting of the Preliminary Annexation Map</b>	<b>Applicant/Petitioner &amp; Staff</b>
With input and assistance of the interested parties, staff will assist in the preparation of the first draft of the annexation map detailing the parcel(s) under consideration.	
<b>Step 5. Town Council Notification of Annexation Application</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Staff will notify Town Council of the Annexation Application at the next available Town Council meeting. This notification serves to provide a basic overview of the Application such as Annexation Area, current zoning, and as well as proposed zoning. Additionally, Staff will outline the next steps leading to the Petition submittal as well as the subsequent adoption process.	
<b>Step 6. Planning Commission 1st Public Workshop</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
To inform the public of the steps, preliminary costs, and benefits, as well as a tentative timetable, the first in a series of public workshops will be held. This will be the first forum for the voicing of any concerns or comments and to ensure that all applicable parcels have been included in the subject area. Staff and Planning Commission will also address the Comprehensive Plan, Future Land Use Map and Zoning Districts.	
<b>Step 7. Drafting of Final Annexation Map and Petition</b>	<b>Applicant/Petitioner &amp; Staff</b>
Staff will assist the Petitioner in the drafting of the final annexation map and petition. The documents will be given to those initiating the annexation with copies available at Town Hall.	
<b>Step 8. Submission of Petition</b>	<b>Applicant/Petitioner &amp; Staff</b>
Once the initiating party has obtained the requisite number of signatures, the completed petition will be submitted to the Town for verification by the Charleston County Election Commission.	
<b>Step 9. Challenge to Annexation</b>	<b>Applicant/Petitioner &amp; Staff</b>
A suit to challenge the annexation may be filed by the municipality, any resident of the municipality, or any resident or owner of property in the area to be annexed.	
<b>Step 10. Planning Commission 2nd Public Workshop</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>

Once the petition is certified and all property owners eligible for opt-out have been notified, a public workshop will be held to discuss the remainder of the process. Any changes to the annexation map that may have occurred due to the opt-out provision will be detailed, and the public will be informed of the impending feasibility study and the timetable for completion.	
<b>Step 11. Updated Timetable</b>	<b>Staff</b>
The Town, in conjunction with the initiating party, will recommend a new timetable for action on the petition based on the scheduled completion and analysis of the feasibility study and Staff's completion of a land-use survey and recommended zoning of the subject area.	
<b>Step 12. Town Council 1st Reading</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Town Council will hold First Reading "intent to annex" for the annexation petition for an initial briefing or "intent to annex". Town Council discussion items for the initial meeting include development agreement (if applicable) and recommended zoning. This initial meeting allows Town Council to review the "intent to annex" and determine if the annexation of property into the Town would be mutually beneficial to all. Town Council may also refer the annexation request to the Annexation Ad Hoc Committee, if applicable.	
<b>Step 13. Drafting of Feasibility Study Scope and Bids</b>	<b>Staff</b>
Dependent on the size and scope of the annexation, the Town Administrator will initiate a formal cost/benefit analysis or outline the scope of the study and request that bids be submitted for its completion, as applicable.	
<b>Step 14. Contract for the Completion of Feasibility Study</b>	<b>Staff</b>
Once the petition is certified by a resolution of Town Council or the Charleston County Election Commission, a contract for the completion of the feasibility study may be enacted.	
<b>Step 15. Annexation Ad Hoc Committee</b>	<b>Applicant/Petitioner, Staff &amp; Annexation Ad Hoc Committee</b>
If applicable, per the Mayor's direction, the Annexation Ad Hoc Committee shall conduct meetings until the terms of the development agreement or other negotiations are complete. The application(s) then proceed to Planning Commission for Public Hearing and recommendation.	
<b>Step 16. Public Notification</b>	<b>Applicant/Petitioner &amp; Staff</b>
The Applicant sends notification letters to each adjacent property owner and submits the <b>registered mail receipts</b> to the Town no later than thirty (30) days prior to the Planning Commission meeting.	
<b>Step 17. Planning Commission Public Hearing and Recommendation</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
The Planning Commission hold a public hearing and make recommendations to Town Council for each of the applicable application(s) including zoning, land use, and Planned Unit Development Concept Plan and/or Initial Master Plan approval, as appropriate. The Zoning Map Amendment and applicable concurrent applications will be forwarded to Town Council for second and final reading.	
<b>Step 18. Town Council Public Hearing, Second and Final Reading</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Not less than thirty days before acting on an annexation petition, the Town must give notice of a public hearing by publication in a newspaper of general circulation in the community, by posting the notice of the public hearing on the municipal website, and by written notification to the taxpayer of record of all properties within the area proposed to be annexed, written notification to the taxpayer of record of all properties within a radius of five hundred (500) feet, to the chief administrative officer of the county, to all public service or special purpose districts, and all fire departments, whether volunteer or full time. This public hearing must include a map of the proposed annexation area, a complete legal description of the proposed annexation area, a statement as to what public services are to be assumed or provided by the municipality, and the fees required for these services. The notice must include a projected timetable for the provision or assumption of these services. Town Council will hold Public Hearing and 2 <sup>nd</sup> and Final Reading of the Annexation as well as Zoning Map Amendment and any concurrent applications.	
<b>Step 19. Annexation Notification</b>	<b>Staff</b>
Upon adoption of the annexation petition by ordinance, the Town shall file written notice in accordance with this Manual.	

### 5.3 ANNEXATION BY ELECTOR PETITION AND ELECTION 25 PERCENT PETITION AND ELECTION METHOD

The 25 percent petition and election method of annexation authorized by S.C. Code Ann. § 5-3300 adopted in 1988 was not constitutional prior to the 2000 amendment because the election was initiated by a freeholder petition. The amendment changed this provision to a petition of 25 percent of qualified electors residing in the area to be annexed and makes a third method of annexation of private property available. The procedure for this method is specified in detail in the statute and must be carefully followed.

It should be noted that the election in the area to be annexed is conducted by the Charleston County Election Commission, but the election within the Town is initiated pursuant to S.C. Code Ann. § 5-3-300(F), (G), and (H) by petition of 5 percent of municipal electors is a municipal election conducted by the Charleston County Election Commission for the Town of Kiawah Island.

#### Procedure

<b>Step 1. Pre-Application Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Prior to the filing of an Annexation Application, the Applicant is required to consult with the Planning Manager or its designee at a Pre-Application Meeting for comments and advice on the appropriate application process and the required procedures, specifications, and applicable standards required by Town of Kiawah Island applicable ordinances.	
<b>Step 2. Application Check-In Meeting</b>	<b>Applicant/Petitioner &amp; Staff</b>
Upon receiving input from Staff at the Pre-Application Meeting, the Applicant shall submit the Annexation Application and required submittal materials during a mandatory Application Check-In Meeting where the Planning Manager or its designee will review the submission for completeness.	
<b>Step 3. Review by Planning Manager</b>	<b>Staff</b>
If the Planning Manager determines that the Annexation Application is complete, the application shall advance as prescribed in the Town of Kiawah Island's Annexation Policy Plan and Procedure Manual.	
<b>Step 4. Drafting of the Preliminary Annexation Map</b>	<b>Applicant/Petitioner &amp; Staff</b>
With input and assistance of the interested parties, Staff will assist in the preparation of the first draft of the annexation map detailing the parcel(s) under consideration.	
<b>Step 5. Town Council Notification of Annexation Application</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
Staff will notify Town Council of the Annexation Application at the next available Town Council meeting. This notification serves to provide a basic overview of the Application such as Annexation Area, current Zoning, and as well as proposed Zoning. Additionally, Staff will outline the next steps leading to the Petition submittal as well as the subsequent adoption process.	
<b>Step 6. Planning Commission 1st Public Workshop</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
To inform the public of the steps, preliminary costs, and benefits, as well as a tentative timetable the first in a series of public workshops will be held. This will be the first forum for the voicing of any concerns or comments and to ensure that all applicable parcels have been included in the subject area. Staff will also address the Comprehensive Plan, Future Land Use Map and Zoning Districts.	
<b>Step 7. Drafting of Final Annexation Map and Petition</b>	<b>Applicant/Petitioner &amp; Staff</b>
Staff will assist the Petitioner in the drafting of the final annexation map and petition. The documents will be given to those initiating the annexation with copies available at Town Hall. Also, during this step staff will collect and organize the necessary parcel-based information and determine if any one landholder meets the 25 percent of assessed property value opt out provision.	



<b>Step 8. Drafting of Final Annexation Map and Petition</b>	<b>Applicant/Petitioner &amp; Staff</b>
Once the initiating party has obtained the requisite number of signatures, the completed petition will be submitted to Town Council for verification. The petition must contain a description of the area to be annexed, the signature of the qualified elector, the address of residence and the act or code section pursuant to which the proposed annexation is to be accomplished - § 5-3-300.	
<b>Step 9. Town Council Petition Certification Resolution</b>	<b>Staff &amp; Town Council</b>
If council finds the petition has been signed by 25 percent or more of qualified resident electors, it will certify that fact to the Charleston County Election Commission by resolution.	
<b>Step 10. Notification of Opt-Out Freeholders</b>	<b>Staff</b>
If applicable, the Town will send written notification via certified return receipt letter to any property owners that are eligible for the opt-out provision. Those eligible are freeholders owning 25 percent of assessed value of property to be annexed or freeholders <b>owning 10 acres or more of agricultural real property</b> .	
If the freeholder files a written notice with the municipal clerk objecting to the annexation, the freeholder's property must be excluded from the area to be annexed. If the freeholder does not reply at least ten days before the election, the area is included in the area to be annexed.	
<b>Step 11. Planning Commission 2<sup>nd</sup> Public Workshop</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
Once the petition is certified and all property owners eligible for opt-out have been notified, a public workshop will be held to discuss the remainder of the process. Any changes to the annexation map that may have occurred due to the opt-out provision will be detailed, and the public will be informed of the impending feasibility study and the timetable for completion.	
<b>Step 12. Updated Timetable</b>	<b>Staff</b>
The Town, in conjunction with the initiating party, will recommend a new timetable for action on the petition based on the scheduled completion and analysis of the feasibility study and Staff's completion of a land-use survey and recommended zoning of the subject area.	
<b>Step 13. Town Council Public Hearing and 1<sup>st</sup> Reading</b>	<b>Applicant/Petitioner, Staff &amp; Town Council</b>
A public hearing will be conducted as required for the 25 percent annexation method. The results of the feasibility study will be published and evaluated as well as all costs, fees, and public service changes that will be made as a result of the annexation. Town Council will hold First Reading "intent to annex" for the annexation petition for an initial briefing or "intent to annex". Town Council discussion items for the initial meeting include development agreement (if applicable) and recommended zoning. This initial meeting allows Town Council to review the "intent to annex" and determine if the annexation of property into the Town of Kiawah Island would be mutually beneficial to all. Town Council may also refer the annexation request to the Annexation Ad Hoc Committee, if applicable.	
<b>Step 14. Drafting of Feasibility Study Scope and Bids</b>	<b>Staff</b>
Dependent on the size and scope of the annexation, the Town Administrator will initiate a formal cost/benefit analysis or outline the scope of the study and request that bids be submitted for its completion, as applicable.	
<b>Step 15. Contract for the Completion of Feasibility Study</b>	<b>Staff</b>
Once the petition is certified by a resolution of Town Council or the Charleston County Election Commission, a contract for the completion of the feasibility study may be enacted.	
<b>Step 16. Annexation Ad Hoc Committee</b>	<b>Applicant/Petitioner, Staff &amp; Annexation Ad Hoc Committee</b>
If applicable, per Town Council direction, the Annexation Ad Hoc Committee shall conduct meetings until the terms of the development agreement or other negotiations are complete. The application(s) then proceed to Planning Commission for Public Hearing and recommendation.	
<b>Step 17. Planning Commission Public Hearing and Recommendation</b>	<b>Applicant/Petitioner, Staff &amp; Planning Commission</b>
The Planning Commission hold a public hearing and make recommendations to Town Council for each of the applicable application(s) including zoning, land use, and Planned Unit Development Concept Plan and/or Initial Master Plan approval, as appropriate. The Zoning Map Amendment and applicable concurrent applications will be forwarded to Town Council for second and final reading.	
<b>Step 18. Call for Election</b>	<b>Charleston County Election Commission</b>

Once the petition is certified, the Charleston County Election Commission will call for a special election to be held within the proposed annexation area under S.C. Code Ann. Title 7 Chap. 13 & 17. The election is for registered qualified electors residing in the proposed annexation area. Furthermore, the election must take place within the subject area. Preclearance under § 5 of the Voting Rights Act may be necessary for a date which has not been cleared for a county election.

The Commission shall give 30 days' newspaper notice in area to be annexed. Registered qualified electors residing within area to be annexed vote in election. Election box or boxes shall be in the area proposed to be annexed. The election commission shall certify the election result to Town Council.

**Step 19. Publishing of Results**

**Staff**

Town Council must publish the results of the election if a majority of the qualified electors vote in favor of the petition to annex. If a majority of all eligible and qualified voters do not vote in favor of the ordinance then the motion dies and may not be initiated for a period of twenty-four (24) months from the day of the election.

**Step 20. Publishing of Fact**

**Staff**

After the results of the election are made public, Town Council must publish in newspaper of general circulation a notice containing:

- a. A description of the area being annexed;
- b. The code section under which the proposed area is being annexed;
- c. A statement that qualified electors in the area voted to be annexed; and
- d. A statement that Town Council may approve the petition unless a petition signed by five percent or more of the electors within the municipality is presented to the Town Council within (30) days from the date of the notice requesting an election to be held within the municipality on the question of the annexation.

**Step 21. Municipal Election**

**Charleston County Election Commission**

If a five percent petition is received and certified, a municipal election of all qualified voters in the Town of Kiawah (not including those in the annexation subject area) must be called pursuant to SC Code Ann. Title Chap. 13 & 17. Town Council must give at least thirty (30) days notice.

If a 5 percent petition is presented to Town Council, the council must delay final reading of the annexation ordinance and certify the petition to the Charleston County Election Commission.

- a. The municipal election must be conducted under S.C. Code Ann. Title 7 Chap. 13 and 17.
- b. The commission shall give at least 30 days' newspaper notice of the election.
- c. If a majority of electors of the municipality vote in favor of the annexation, council shall give final reading to the ordinance declaring the area annexed.
- d. If a majority of votes are oppose the annexation, council shall publish the results and table the proposed annexation ordinance. Another annexation election may not be initiated within the territory for 24 months from the date of the vote. S.C. Code Ann. § 5-3-210.

If no 5 percent petition is presented to council, the annexation may be completed by enacting the ordinance 30 days after publication of the notice.

**Step 22. Town Council Public Hearing, Second and Final Reading**

**Applicant/Petitioner, Staff & Town Council**

Town Council will hold Public Hearing and 2nd and Final Reading of the Annexation as well as Zoning Map Amendment and any concurrent applications.

**Step 23. Annexation Notification**

**Staff**

Upon adoption of the annexation petition by ordinance, the Town shall file written notice in accordance with this Manual.

## CHAPTER 6 | APPENDICES

### 100 PERCENT PETITION FORM

TO THE MAYOR AND COUNCIL OF THE TOWN OF KIAWAH ISLAND:

The undersigned, being 100 percent of the freeholders owning 100 percent of the assessed value of the property in the contiguous territory described below and shown on the attached plat or map, hereby petition for annexation of said territory into the Town by ordinance effective as soon hereafter as possible, pursuant to S.C. Code Ann. § 5-3-150(3).

The territory to be annexed is described as follows:

The property is designated as follows on the County tax maps: \_\_\_\_\_

It is requested that the property be zoned as follows: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address, City, Zip

=====

FOR MUNICIPAL USE:

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation: \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

**75 PERCENT PETITION FORM**

TO THE MAYOR AND COUNCIL OF THE TOWN OF KIAWAH ISLAND:

The undersigned, being at least 75 percent of the freeholders owning at least 75 percent of the assessed value of the property in the contiguous territory described below and shown on the attached plat, hereby petition for annexation of said territory to the Town by ordinance effective as soon hereafter as possible, pursuant to S.C. Code Ann. § 5-3-150(1).

The territory to be annexed is described as follows:

A plat of the area must be attached.

The property is designated as follows on the County tax maps: \_\_\_\_\_

It is requested that the property be zoned as follows: \_\_\_\_\_

The Petition must be dated before the first signature is affixed, and all signatures must be obtained within six months of that date. The first signature was affixed on this Petition on \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address, City, Zip

=====

FOR MUNICIPAL USE:

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation: \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

## NOTICE OF PUBLIC HEARING ON ANNEXATION

The Mayor and Council of the Town of Kiawah Island will conduct a public hearing at Town Hall \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock \_\_m pursuant to S.C. Code Ann. § 5-3-150(1) on a petition for annexation of the following property:

The following services for the area will be assumed or provided by the Town on the following timetable:

The taxes and fees required for these services are:

DRAFT

The petition requests that the property be zoned \_\_\_\_\_.

The petition is available for public inspection at the Town Clerk's office in Town Hall during normal business hours.

### PUBLICATION CHECKLIST - 30 DAYS PRIOR TO HEARING:

- ☐ Publish in a newspaper of general circulation in the community.
- ☐ Post on the municipal website.
- ☐ Mail copy of notice to taxpayers of record of properties in area to be annexed.
- ☐ Mail to the chief administrative officer of the county.
- ☐ Mail to all public service or special purpose districts in the area to be annexed.
- ☐ Mail to all fire departments, whether volunteer or full time, in the area to be annexed.

**25 PERCENT PETITION FORM**

TO THE MAYOR AND COUNCIL OF THE TOWN OF KIAWAH ISLAND:

The undersigned qualified elector's resident within the territory described below hereby petition for an election in said territory pursuant to S.C. Code Ann. § 5-3-300, et seq., on the question of extension of the corporate limits of the municipality by annexation of the described territory.

The territory to be annexed is described as follows:

The property is designated as follows on the County tax maps: \_\_\_\_\_

It is requested that the property be zoned as follows: \_\_\_\_\_

The Petition must be dated before the first signature is affixed, and all signatures must be obtained within six months of that date. The first signature was affixed on this Petition on \_\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Street Address, City, Zip

=====  
FOR MUNICIPAL USE:

Petition received by \_\_\_\_\_, Date \_\_\_\_\_

Description and Ownership verified by \_\_\_\_\_, Date \_\_\_\_\_

Recommendation: \_\_\_\_\_

By: \_\_\_\_\_, Date \_\_\_\_\_

**RESOLUTION CERTIFYING 25 PERCENT ANNEXATION PETITION**

BE IT RESOLVED by the Mayor and Council of the Town of Kiawah Island, South Carolina, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as follows:

It is hereby certified that the Town of Kiawah Island has received petitions signed by 25 percent or more of the qualified electors resident within the area described below which is proposed to be annexed into the Town pursuant to S.C. Code Ann. § 5-3-300, et seq., and the Charleston County Election Commission is hereby requested to conduct an election to be held on \_\_\_\_\_, 20\_\_\_\_, within the area proposed to be annexed on the question of extension of the corporate limits of the municipality by annexation of the following described area:

The Charleston County Election Commission is requested to certify the results of the election to Town Council.

MAYOR:

\_\_\_\_\_

Attest:

\_\_\_\_\_

TOWN CLERK

=====

[NOTE: If the election is to be held on a date which has not already been precleared under § 5 of the Voting Rights Act for a county election, it may be necessary to submit the proposed date to the U.S. Attorney General before giving public notice of the election. The attorney general has 60 days in which to respond to a complete submission.]

## LETTER TO COUNTY ELECTION COMMISSION REQUESTING ANNEXATION ELECTION

To: Charleston County Commissioners of Election

Ladies and Gentlemen:

We enclose a copy of the Resolution adopted by the Town Council of the Town of Kiawah Island on \_\_\_\_\_, 20\_\_\_\_, certifying that a proper petition has been received asking for annexation of the area described in the resolution generally known as \_\_\_\_\_ and requesting a special election in the described area on \_\_\_\_\_, 20\_\_\_\_, pursuant to S.C. Code Ann. § 5-3-300, et seq., on the question of the annexation.

The election is not a municipal election, but it is a special county election which must be conducted pursuant to S.C. Code Title 7, Chapters 13 and 17, as provided by S.C. Code Ann. § 5-3-300(D).

We also enclose a Notice of Election for your convenience in giving the necessary notice by newspaper at least 30 days prior to the date set for the election in accordance with S.C. Code Ann. § 5-3-300(D), and a form which you may use to report the results of the election.

Because the proposed election date is not a date already precleared by the U.S. Attorney General under § 5 of the Voting Rights Act for a county election, it was set to allow enough time for a § 5 submission and response.

Yours very truly,

---

Town Clerk

cc: Municipal Attorney  
County Attorney



**NOTICE TO OWNERS OF PROPERTY ELIGIBLE FOR EXCLUSION**

To: Owners of 25 percent of assessed value of property to be annexed and *(if applicable, owners of agricultural property)* in area to be annexed

Pursuant to S.C. Code Ann. § 5-3-300(I), please take notice that the area described in the enclosed Resolution of the Town Council of the Town of Kiawah Island has been proposed for annexation to the municipality upon favorable vote of electors in the area in an election to be held on \_\_\_\_\_, 20\_\_\_\_.

You may be a freeholder of property eligible for exclusion from the annexation. Written notice of your objection to the annexation of your property must be filed with the undersigned Town Clerk at least ten (10) days prior to the election.

Please refer to S.C. Code Ann. § 5-3-300(I) to determine eligibility for exclusion. A copy is enclosed.

Date mailed \_\_\_\_\_

Sincerely,

\_\_\_\_\_  
Town Clerk

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

## NOTICE TO ANNEXATION ELECTION

Date: \_\_\_\_\_

In accordance with the certificate of the Town Council of the Town of Kiawah Island, South Carolina, and pursuant to S.C. Code Ann. § 5-3-300, a special election will be held in the territory described below on \_\_\_\_\_, 20 \_\_, for the purpose of determining whether said territory shall be annexed to the Town of Kiawah Island, South Carolina.

The territory proposed to be annexed is described as follows:

Polling places where registered voters residing in the described area may vote are located at:

The polls will be open from 7:00 AM to 7:00 PM.

Sincerely,

\_\_\_\_\_, Chairman,

Charleston County Election Commission

**CERTIFICATION OF ELECTION RESULTS BY COUNTY ELECTION COMMISSION**

To: Mayor and Council, Town of Kiawah Island

Re: Annexation Election

Area: \_\_\_\_\_

Pursuant to S.C. Code Ann. § 5-3-300(D), the results of the annexation election conducted this date in the above area described in the Resolution Certifying the 25 percent Annexation Petition are certified to be as follows:

In favor of annexation \_\_\_\_\_ votes

Opposed to annexation \_\_\_\_\_ votes

Contested ballots \_\_\_\_\_

TOTAL BALLOTS \_\_\_\_\_

CHARLESTON COUNTY ELECTION COMMISSION

Date: \_\_\_\_\_

By: \_\_\_\_\_

**RESOLUTION PUBLISHING ELECTION RESULTS**

BE IT RESOLVED by the Mayor and Council of the Town of Kiawah Island this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as follows:

Pursuant to S.C. Code Ann. § 5-3-300, et seq., an annexation election was held in the area described in the attached notice by the Charleston County Election Commission which has reported the attached results of election which are hereby published.

The Town Clerk is hereby directed to publish the newspaper notice of intent to annex attached hereto as required by S.C. Code Ann. § 5-3-300(E).

MAYOR

Attest:

\_\_\_\_\_  
TOWN CLERK

## **NOTICE OF INTENT TO ANNEX**

Pursuant to S.C. Code Ann. § 5-3-300, et seq., the qualified electors of the area described below voted in an election on \_\_\_\_\_, 20\_\_\_\_, to be annexed to the Town of Kiawah Island. Town Council intends to approve the annexation by ordinance 30 days hereafter unless a petition signed by five percent or more of the electors within the Town of Kiawah Island is presented to Town Council within 30 days from the date of publication of this notice requesting an election within the Town of Kiawah Island on the question of annexation of the following area:

DRAFT

[NOTE: This notice must be run in a newspaper of general circulation within the Town after the results of the annexation election are published by written resolution of Town council. If a petition is received, an election within the Town must be held pursuant to S.C. Code Ann. § 5-3-300(G), and annexation must be approved by majority vote.]

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## **Sec. 12-79. Designation of annexed territory.**

- (a) *Purpose and intent.* This section describes the processing procedure for development of property located within newly annexed areas.
- (b) *Authority.* Changing the corporate limits of a municipality is authorized by S.C. Code Ann. §§ 5-3-10 through 5-3-315, as amended.
- (c) *Annexation Policy.* Applications for newly annexed territory shall follow the Town's Annexation Policy.
- (d) *Zoning Designation.* Zoning of the proposed annexation is an important factor in the review and analysis of an annexation petition.
  - (i) A Zoning Map Amendment application requesting the permanent zoning district(s) for the annexation area may be submitted concurrently with the annexation petition pursuant to Section 12-158.
  - (ii) If a zoning map amendment application requesting a specific zoning designation does not accompany the annexation petition, the territory shall be subject to the R-1, Residential Zoning District designation at the time of annexation.
- (e) *Development applications.* No permit applications shall be filed until proceedings to designate permanent zoning for the newly annexed territory pursuant to Section 12-158 or Section 12-159 as applicable have been completed. Permit applications shall include but not be limited to zoning permit applications, variance or special exception applications, subdivision applications as determined by the Planning Director.

(Code 1993, § 12A-220; Ord. No. 94-12, § 2(12A-206), 9-26-1994; Ord. No. 2005-08, § 12A-220, 10-12-2005)

**Sec. 12-159. Planned development.**

- (a) *Definition.* The term "planned development," is as defined by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, as amended, S.C. Code 1976, § 6-29-740 is a type of zoning district (PD, Planned Development District) and a type of development plan. PD zoning districts are inextricably linked to planned development plans, in that no rights of development apply to a PD zoning designation other than those of the approved planned development plan.
- (b) *Purpose and intent.* Planned development provisions are intended to encourage innovative site planning for residential, commercial and institutional developments within planned development districts. Planned development districts may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare. The PD, Planned Development District regulations of this article are intended to encourage achievement of the goals of the Town of Kiawah Island Comprehensive Plan and to allow flexibility in development that will result in improved design, character, and quality of new mixed use developments and preserve natural and scenic features of open spaces. The following objectives may be attained through the use of the planned development process:
- (1) A maximum choice in the types of environment available to the public by allowing a development that would not be possible under the strict application of the standards of this article that were designated primarily for development on individual lots;
  - (2) A greater freedom in selecting the means to provide access, light, open space and design amenities;
  - (3) Quality design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations and land use arrangements;
  - (4) A development pattern in harmony with the land use density, transportation facilities and community facilities objectives of the comprehensive plan;
  - (5) The permanent preservation of common open space, recreation areas and facilities;
  - (6) An efficient use of the land resulting in more economical networks of utilities, streets, public grounds and buildings, and other facilities;
  - (7) A creative approach to the use of land and related physical facilities that results in better development and design and the construction of amenities; and
  - (8) A development pattern that incorporates adequate public safety and transportation-related measures in its design and compliments the developed properties in the vicinity and the natural features of the site.
- a. *Applicability.* The PD, Planned Development District shall apply to existing areas shown on the zoning map as planned development and may also be incorporated into any zoning district subject to criteria contained herein and a minimum lot size of four acres. Planned Development Applications may be submitted along with annexation petitions for properties requesting to be annexed into the Town of Kiawah Island and shall adhere to the Town's Annexation Policy.
- b. *Development standards.* Development standards pertaining to density, lot size, location, and arrangement of buildings and structures, lot dimensions, and landscaping are waived in the PD districts. The development standards set forth in this subsection, those in the approved planned development stipulations and any in the approved planned development sketch plans shall apply the following standards:

1. *Dimensional standards.* Each lot located on the perimeter of the planned development shall maintain the rear yard setback requirements and any buffer requirements of the adjacent zoning district.
  2. *Architectural standards.* Architectural design shall comply with all other requirements of this article or other ordinances of the Town of Kiawah Island.
  3. *Lots to abut upon common open space.* Residential properties shall maximize exposure to common open space or similar areas.
  4. *Access.*
    - (i) Areas between structures shall be covered by easements where necessary for access and to provide for maintenance and utility service.
    - (ii) Primary vehicular access to commercial development shall be through limited access roads.
  5. *Commercial areas.*
    - (i) Commercial areas and adjacent residential areas shall be directly connected through paved sidewalks, trails or other pedestrian infrastructure.
    - (ii) Commercial areas shall be planned as groups having common parking areas and common ingress and egress points.
  6. *Signs.* Signs shall comply with the Architectural Review Board standards.
  7. *Parking.* Parking shall be provided in accordance with the standards of this article. Modifications to the parking standards may be proposed in a planned development request where the Town Council determines that the amount of parking requested and its location is sufficient for the uses proposed.
  8. *Resource areas.* Planned developments shall protect any resources determined significant by the Town Council including, but not limited to, wetlands, mature trees, scenic views, water access and shoreline buffers, and habitat of species designated as of Federal, State and Local concern.
- c. *Common open space.* A proposed development that is applying for a higher density than the base zoning district allows shall designate a minimum amount of the usable land area as common open space. This common open space shall be located to preserve any significant resources. Where common open space is designated, the following standards apply:
1. The common open space area shall be detailed on each sketch plan and recorded with the final plat or separate instrument.
  2. The proposed common open space shall be usable and appropriate to the size of the development and to the new residents of the planned development. The purpose of common open space is to permit areas, which could otherwise be developed into buildable lots or otherwise sold individually, to provide a significant amenity to the residents who will interact with the open space on a daily basis. It is not the purpose of common open space to permit open space for land that is otherwise unusable on a daily basis by residents. Common open space may include unimproved land, landscaped areas, improved recreation areas, recreational buildings and structures totally accessory to recreational uses, as well as freshwater wetland areas and water surfaces, all located within the development. Natural landscapes, such as wetlands, may also be considered as open space if preserved intact and if they include a recreation component (e.g., trails, etc.). The term "usable" means the open space includes uses or facilities that are adaptable to recreational or leisure use and



are accessible to the residents of the proposed development or the general public, such as seating areas, picnic shelter, community garden, pedestrian and bicycle trail access to a designated greenway, public square, swimming pools, playing fields, or a new playground. The use or facility must be approved by Town Council in accordance with the approval and conveyance procedures in subsection (8)c.6 of this section.

3. Land designated as common open space shall not be occupied by streets, drives, parking areas or structures, other than recreational structures.
4. All property owners in the planned development shall have access to the open space by means of a public or private street or walkway in an easement a minimum of 20 feet in width.
5. Common open space shall be provided within each phase of the planned development in sufficient amounts to serve the expected population of that phase.
6. The applicant must have proof of commitment from the entity that will be responsible for the common open space prior to the Planning Commission Meeting for which the case is scheduled. The common open space shall be conveyed prior to recording the final plat, in accordance with one of the following methods:
  - (i) By dedication to the Town or its designee as publicly owned open space. Parks, open space, and recreation facilities proposed for dedication to the Town must be acceptable to the Town Council with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide an environmental assessment), and budgetary and maintenance terms.
  - (ii) By leasing or conveying title (including beneficial ownership) to a corporation, homeowner's association or other legal entity. The terms of such lease of other instrument of conveyance must restrict the use of the area to open space/recreational uses.

d. *Planned development procedure.* This procedure involves a preapplication conference and approval of a PD development plan and PD zoning map amendment.

1. *Preapplication Meeting.* Before submitting a PD development plan for a planned development, the applicant shall confer with the Planning Director and any other officials designated by the Planning Director. The purpose of this preapplication conference is to discuss the proposal, community involvement, and to provide comments and advice on the appropriate application process and the required procedures, specifications, and applicable standards required by Town of Kiawah applicable ordinances.
2. *Formal Submittal.* Upon receiving input from Staff at the Pre-Application Meeting, the Applicant shall submit the planned development and required submittal materials where the Planning Director or its designee will review the submission for completeness.
3. *Conceptual PD Development Plan Presentation.* At least one time prior to formal application submittal, Planned Development applicants shall present their Conceptual PD Development Plan to the Town of Kiawah Island Planning Commission at a Planning Commission workshop. This presentation shall be for discussion and feedback purposes only and no action shall be taken on the Conceptual PD Development Plan at the workshop.

(i) At least 20 days prior to the Planning Commission workshop, the applicant shall submit a memo and presentation describing the proposed PD Development Plan.

(ii) This requirement applies to Planned Developments that contain 50 or more dwelling units and/or 5 or more acres of nonresidential development.

(iii) The Planning Commission or Planning Director may require applicants for Planned Developments that do not meet the thresholds in sub-section 2, above, to present the proposed Development at a Planning Commission workshop prior to submitting a formal application.

4. *Community Workshop.* After the pre-application conference, it is recommended that the applicant hold one or more community workshops. The purpose of a community workshop is to:

(i) Ensure early citizen participation in an informal forum, in conjunction with the development applications; and

(ii) Provide an applicant the opportunity to understand and try to mitigate any impacts an application may have on an affected community.

(iii) A community workshop is not intended to produce complete consensus on all applications, but to encourage engagement between an applicant and neighbors.

(iv) It shall be the responsibility of the applicant to provide neighbor and parties in interest notice of the community workshop with the following notice details:

Indicate the date, time, and place of the public hearing or date of action that is the subject of the notice;

Describe the property involved in the application by street address and, if required, by legal description;

Describe the nature, scope, and purpose of the application or proposal; and

Indicate where additional information on the matter can be obtained.

5. *Planned development plan.*

- (i) *Application.* After the required preapplication conference and community workshop, a complete application for PD development plan approval must be submitted to the Planning Director on a form established by the Planning Director including an approved and recorded plat showing the current property lines of the property/properties to be included in the planned development, a current recorded deed and applicable fees. The PD development plan application shall include the requested planned development stipulations and sketch plan. The sketch plan shall be drawn to scale.

- (ii) *Planned development stipulations.* The following shall be included in the requested planned development stipulations:

- A. The name of the planned development, not duplicating the name of any other planned development or subdivision, the final plat of which has been recorded in Charleston County, South Carolina;
- B. A statement of objectives of the proposed development;
- C. The total acreage of the planned development, broken down into total acreage, total highland acreage, total freshwater wetland acreage and total critical line wetland or marsh acreage;
- D. A table of proposed land uses including:

- i. A table of proposed maximum and average residential densities for each residential use;
  - ii. The maximum total acreage of each residential use;
  - iii. The maximum allowable number of each type of residential unit requested;
  - iv. The maximum proposed floor area ratios (percent of lot in relation to building floor area), and the maximum building/lot coverage for each nonresidential use;
  - v. All dimensional and lot standards requested, including waterfront development standards where applicable, for each land use type designated;
- E. An analysis of the impact of the proposed development on existing public facilities and services (e.g., roads and streets, utility service, water, sewer, fire, ambulance, etc.). Any proposed future improvements to these facilities and services to be made as part of the planned development shall also be included;
- F. A traffic study for planned developments that:
- i. Contain 50 or more units; or
  - ii. Are comprised of five or more acres;
- G. A development schedule with a generalized phasing schedule, if appropriate. The phasing schedule shall include the number of dwelling units, total acreage of each residential use, total gross floor area of each nonresidential use, and percentage of common open space to be included in each phase;
- H. A statement indicating how any common open space/recreation areas will be owned or managed;
- I. A statement indicating how all roads will be owned and maintained;
- J. A statement of inclusion and compliance with processes included in this chapter that are not mentioned in the planned development stipulations;
- K. A statement of agreement to proceed with proposed development in accordance with the provisions of these zoning regulations, applicable provisions of the Town of Kiawah Island Comprehensive Plan, and with such conditions as may be attached to any rezoning to the applicable PD district;
- L. A statement that the provisions of section 12-163, variances, shall not apply to the planned development and that all major changes to the planned development must be approved by Town Council;
- M. Letters of coordination from all agencies from which the applicant must either:
- i. Obtain permits; or
  - ii. Obtain services and/or facilities;

- N. A list of professionals engaged by the applicant, both as to the companies and the development team of individuals for such companies that will be involved in the development. Professionals shall include but not limited, architects, landscape architects, engineers, urban planners, design and construction consultants, or other development related professionals.
  - O. Any other information that the Planning Director determines is necessary to determine whether the application complies with the standards established in this section.
- (iii) *Sketch plan.* Multiple sketch plans may be submitted and the sketch plans shall be drawn to scale. The following shall be included on the requested sketch plan:
- A. The general location and amount of land proposed for each land use including single-family residential, multifamily residential, institutional, office, commercial, industrial, common open space/recreation, street use, etc.;
  - B. Conceptual lot lines;
  - C. Pedestrian and motor traffic circulation;
  - D. Location, acreage, and type (freshwater or critical line/marsh) of all wetlands as they exist prior to development. The location and acreage of all freshwater wetlands to be developed upon shall be indicated;
  - E. Architectural elevations for each type of residential and nonresidential unit;
  - F. The general location, size and capacity of all existing and proposed water and sewer lines;
  - G. Areas to be included in each phase of development, including the location of all common open space areas;
  - H. The location of all construction entrances;
  - I. A landscaping sketch plan, including the location and composition of all screening and buffering materials;
  - J. A utility sketch plan with the location of any on-site natural areas, buffers, trees and sidewalks that may be impacted by utility facilities including existing and proposed location of any easements or rights-of-way;
  - K. Any other information that the Planning Director determines is necessary to determine whether the application complies with the standards established in this section.
- (iv) *Planning Director review and report.* Once an application is deemed complete and to contain all information required herein by the Planning Director, the application will be scheduled for a Planning Commission meeting and the applicant and other interested parties will be notified in accordance with this article. The Planning Director shall prepare a staff report that reviews the PD development plan application in light of the underlying zoning district standards contained in division 2 of this article, and all other applicable development standards and planning policies.

- (v) *Planning Commission review and recommendation.* The Planning Commission shall review the proposed PD development plan and adopt a resolution recommending that the Town Council approve, approve with conditions or deny the proposed development plan. The Planning Commission's recommendation shall be based on the approval criteria set forth in subsection (8)d.2(vii) of this section. The Planning Commission shall submit its recommendation to the Town Council within 30 calendar days of the Planning Commission meeting at which the PD development plan was introduced. At any time prior to action by the Planning Commission, the applicant may request that the Planning Commission enter mediation. When mediation is requested, the Planning Commission shall assign one of its members as a representative in mediation proceedings and the Planning Director shall represent the planning staff. A majority vote of the entire Planning Commission membership in a public meeting shall be required to accept any mediated settlement. An accepted mediated settlement cannot waive the standards of this article. Prior to beginning talks, applicable time limits for review and action on complete applications must be extended by mutual agreement of the applicant and Planning Commission.
- (vi) *Town council hearing and decision.* After receiving the recommendation of the Planning Commission, the Town Council shall hold at least one public hearing, and any time after the close of the public hearing, take action to approve, approve with conditions or deny the proposed PD development plan based on the approval criteria set forth in subsection (8)d.2(vii) of this section. If the Town Council takes action to approve the PD development plan, it shall establish required timeframes for development of the entire planned development and its individual phases, if any. Within ten working days of approval by Town Council of a planned development, the applicant shall submit three copies of the approved planned development guidelines and sketch plan to the department. This plan shall contain all changes and conditions approved by Town Council.
- (vii) *Approval criteria.* Applications for PD development plan approval may be approved only if the Town Council determines that the following criteria are met:
- A. The PD development plan complies with the standards contained in this article;
  - B. The development is consistent with the comprehensive plan and other adopted policy documents; and
  - C. The Town and other applicable agencies will be able to provide necessary public services, facilities, and programs to serve the development proposed, at the time the property is developed.
  - D. The development will protect, health, safety, and general welfare of the public.
  - E. The development will not result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation.
- (viii) *Identification of zoning maps.* Approved planned developments shall be indicated on the official zoning map.

- (ix) *Compliance with other regulations.* Unless expressly stated in this section or approved at the time of a planned development approval, all applicable standards of this article and other law shall apply to development within a planned development. Planned developments may provide for variations from other ordinances and the regulations of other established zoning districts concerning use, setbacks, lot area, density, bulk and other requirements to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare.
- (x) *Subdivision of land located within approved planned developments.* All subdivision of land located within approved planned developments shall be consistent with the stipulations approved by Town Council, and shall satisfy the requirements of this article.

(Code 1993, § 12A-505; Ord. No. 94-12, § 2(12A-508), 9-26-1994; Ord. No. 2005-08, § 12A-505, 10-12-2005)

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