

Ordinance 2013-05

AN ORDINANCE AMENDING ARTICLE 16, CHAPTER 4, SECTION 16-406, BEACH WALKOVERS

Action: To adopt the recommended ordinance amendment of Article 16, Chapter 4, Section 16-406, Beach walkovers as outlined in Ordinance 2013-05.

Process: First Reading: April 2, 2013
Public Meeting: April 30, 2013 at 10 am
Public Meeting: May 1, 2013 at 2:30 pm
Second Reading: May 7, 2013 at 2 pm

Committee: On March 4, 2013, the Environmental Committee recommended amendments to the Beach Walkovers ordinance. On March 11, 2013 the Environmental subcommittee further recommended clarifications to the types of walkovers and the inspection procedures for each.

Amendments: The intent of the amended ordinance is to modify the current ordinance such that the Town will follow the DHEC OCRM enforcement guidelines, differentiate between private and community walkovers and allow the following:

- “grandfather in” current beach walkovers that are short of the dunes; allowing beachgoers to walk through the dunes seaward of the beach walkover prior to the establishment of dune vegetation.
- require future beach walkovers to be in compliance at the time of construction and to remain in compliance unless they extend more than 15 feet onto the active beach.
- require community beach walkovers designed for higher traffic volumes or those otherwise designated for public access to extend over the dunes and make them subject to additional regulations and inspection every five years.

Attachment
Ordinance 2013-5

**TOWN OF KIAWAH ISLAND
ORDINANCE 2013-05**

AN ORDINANCE AMENDING ARTICLE 16, CHAPTER 4, SECTION 16-406, BEACH WALKOVERS

WHEREAS, Section 48-39-10 of the South Carolina Code of Laws, 1976, as amended creates the Coastal Division of the Department of Health and Environmental Control (hereinafter DHEC) and empowers the Coastal Division with authority to promulgate necessary rules and regulations pertaining to activities within the "critical area" which specifically includes the area from the mean high-water mark landward to the setback line as determined in Section 48-39-280 of the South Carolina Code of Laws, 1976, as amended, and;

WHEREAS, the Coastal Division of DHEC has promulgated certain rules and regulations governing the construction of beach walkovers in the "critical area" and such rules and regulations are contained in the South Carolina Code of State Regulations, R 30-13 (0) (1), and;

WHEREAS, Section 48-39-350 of the South Carolina Code of Laws, 1976, as amended requires that coastal municipalities prepare, adopt, and periodically revise a local comprehensive beach management plan, and;

WHEREAS, the Town of Kiawah Island as a coastal political subdivision of the State of South Carolina shares concurrent jurisdiction with the Coastal Division of DHEC for the purpose of regulating the construction of beach walkovers in the "critical area," and;

WHEREAS, in carrying out that concurrent jurisdiction the Town of Kiawah Island has previously adopted Article 16, Beach Management, of the Municipal Code, and;

WHEREAS, the Town of Kiawah Island's ten miles of oceanfront development is adjacent to the Town's beachfront and is characterized by careful placement of structures that are considerably landward of the dune system, and;

WHEREAS, the beachfront is also characterized by an approximate ten mile beachfront strip of land separating the oceanfront property lines from the mean high water mark (this beachfront strip contains a large portion of the "critical area" referenced herein), and;

WHEREAS, this approximate ten mile beachfront strip of land is owned by the Kiawah Island Community Association but subject to the concurrent jurisdiction of the Coastal Division of DHEC and the Town of Kiawah Island, and;

WHEREAS, this approximate ten mile beachfront strip of land is characterized by a large number of beach walkovers, both private and community, that have been permitted by the Coastal Division of DHEC, and;

WHEREAS, the Town of Kiawah Island wishes to amend Section 16-406 of the Municipal Code so as to mirror the practice regarding beach walkover compliance and enforcement interpretation employed by the Coastal Division of DHEC and so as to be consistent with the applicable regulations, and;

WHEREAS, the Town wishes to identify and distinguish “community beach walkovers” (which shall be specifically identified and set forth herein) which are subject to a higher volume of use by members of the community than are “private beach walkovers,” and;

WHEREAS, the identified “community beach walkovers” present the Town with an entirely different set of circumstances than do “private beach walkovers,” and as such shall be subject to additional regulations.

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

This Ordinance is adopted to replace Article 16, Chapter 4, Section 16-406, Beach Walkovers.

Section 2. Ordinance

Section 16-406, Beach Walkovers is replaced with the following.

Section	16-406	Beach Walkovers
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- (A) Private beach walkovers which were constructed in accordance the Coastal Division of DHEC requirements as set forth in the South Carolina Code of State Regulations, R 30-13 (O) (1) shall be deemed in compliance and continue to remain in compliance, except as provided for in Paragraph (B) herein.
- (B) It is unlawful for any property owner to knowingly allow a private or community beach walkover that extends more than fifteen (15) feet onto the **active beach** to exist twelve months from the date said property owner receives written notice from the Town requesting that the property owner remove and/or modify said beach walkover. The notice shall be sent by certified mail return receipt requested. The Town will conduct periodic inspections of the beach and beach walkovers and should the Town, during the course of these inspections, find the beach walkovers to be unsafe or unsightly shall require the property owner to modify said beach walkover. Should the Town determine that the violation described herein is the result of erosion or escarpment caused by a storm, abnormally high tides, or other natural phenomenon and the Town also determines that such erosion or escarpment is temporary and will naturally correct itself, the Town may suspend such enforcement of this subparagraph. **Active beach** shall be defined herein as the areas seaward of the escarpment or the first line in the stable vegetation, whichever first occurs, measured from the ocean landward.
- (C) It is unlawful for the owner of a community beach walkover that does not continue to comply with the South Carolina Code of State Regulations, R 30-13 (O) (1) to knowingly fail to modify the beach walkover within twenty four months from the date said owner

receives written notice from the Town requesting that the owner extend and/or modify said beach walkover. The notice shall be sent by certified mail return receipt requested.

- (D) Should said owner fail to extend and/or modify the community beach walkover within twenty four months of receiving written notice, the Town of Kiawah Island shall be authorized to extend and/or modify said community beach walkover and file a real property lien against said owner's property for the costs associated with such extension and/or modification, including reasonable attorney's fees.
- (E) In the event a property owner(s) can show satisfactory evidence of hardship or other extenuating circumstance(s) that precludes owner(s) from correcting the violation within twenty four months the Town of Kiawah may enter into a written agreement with owner(s) that provides a mutually agreeable date by which the violation will be brought into full compliance.
- (F) Pursuant to Section 48-39-350 of the South Carolina Code of Laws the Town adopted a local comprehensive beach management plan. The Town is required under the referenced section to update such plan at least every five years. As part of fulfilling that statutory mandate in 2012 the Town conducted an inventory and report of compliance/noncompliance of all community beach walkovers adjacent to the Kiawah Island beach. In conjunction with the future five year updates of the local comprehensive beach management plan the Town shall simultaneously conduct an inventory and report of compliance/noncompliance of all community beach walkovers.
- (G) Community beach walkovers are specifically identified in Exhibit "A" attached hereto and incorporated herein.

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 of 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 the Town Council for the Town of Kiawah Island.

PASSED, APPROVED, AND ADOPTED BY COUNCIL FOR THE TOWN OF KIAWAH ISLAND ON THIS _____ DAY OF _____, 2013.

Charles R. Lipuma, Mayor

Petra Reynolds, Town Clerk

First Reading Approval: April 2, 2013

Second Reading Approval _____

LOCATION OF 42 "COMMUNITY" BEACH WALKOVERS

Kiawah Island, South Carolina



Map ID	Ownership	Category
22	Windswept	Regime
23	KICA	Community Access
24	KIGR Sanctuary	Resort
25	KICA	Community Access
26	KICA	Community Access
27	KICA	Community Access
28	KICA	Community Access
29	KICA	Community Access
30	KICA	Community Access
31	KICA	Community Access
32	KICA	Community Access
33	KICA	Community Access
34	Royal Family	Community Access
35	Royal Family	Community Access
36	Ocean Palms	Regime
37	KICA	Community Access
38	KICA	Community Access
39	KICA	Community Access
40	Beach Club	Private
41	Beach Station	Private
42	KICA	Community Access

Map ID	Ownership	Category
1	Charleston County	Public
2	KICA	Community Access
3	Duneside Villas	Regime
4	Beach Townhouses	Regime
5	KIGR	Resort
6	KIGR	Resort
7	Slipwatch	Regime
8	KICA	Community Access
9	KICA	Community Access
10	KICA	Community Access
11	KICA	Community Access
12	KICA	Community Access
13	KICA	Community Access
14	KICA	Community Access
15	KICA	Community Access
16	KICA	Community Access
17	KICA	Community Access
18	Mariners Watch	Regime
19	KIGR	Resort
20	Windswept	Regime
21	Windswept	Regime

LEGEND

- Public
- Community Access
- Regime
- Resort
- Private