

KIAWAH ISLAND
COMMUNITY
ASSOCIATION

FAQ's 2024 PROPOSED KICA AMENDMENTS
April 24, 2024

GENERAL

- 1) What are the key priorities for the Governance Task Force in considering the proposed amendments to the KICA Covenants in 2024?
 - a) Ensure that the proposed amendments are necessary and beneficial to the entire KICA Community.
 - b) Encourage meaningful input from the KICA Community broadly, i.e. both homeowners and other key stakeholders, such as the Resort, the Town and the Developer.
 - c) Seek outside legal review to ensure proposed amendments conform with all KICA governing documents and relevant laws.
 - d) Obtain formal Board approval at a regular Board meeting.
 - e) With the assistance of KICA Staff, execute a comprehensive communication plan.

- 2) What are the four covenants being proposed:
 - a) **Developer Board Seat Amendment.** Removal of the unique ability of the Type E Member, i.e., the Company/Master Developer, to appoint a Board member to the KICA Board.
 - b) **Architectural Governance Amendment.** Confirm and expand KICA's authority to establish an architectural review function and to exercise such authority in a manner that is most beneficial to the Community.
 - c) **Enforcement Amendment.** Confirm the ability of KICA to assess penalties and fines for violations of rules and regulations. This amendment is substantially similar to an amendment that was approved by the Community in 2018, but never properly recorded.
 - d) **Administrative Amendment.** Administrative clean-up in the language of the Covenants, such as name changes and referencing current Municipal entities.

- 3) Why is each particular Covenant important to the KICA Membership?
 - a) A mandated Type E Member or Developer seat on the KICA Board is no longer necessary or appropriate because the Developer's undeveloped residential property ownership is less than 2%. Given the maturity of the Kiawah Community, we believe it appropriate that all Board directors be elected based on voting rights conferred in the KICA Covenants, and not by appointment.

- b) KICA needs the authority to create an architectural review function that is in the best interests of the entire Community; this is standard practice for most community associations. The language is broadly structured, as the final organization has not been determined yet.
- c) A full, formal and complete authorization of KICA's enforcement powers will enable the Association to deal constructively with unfortunate, but inevitable, serious violations.
- d) The miscellaneous changes simply reflect current entity structures and nomenclatures and are 'clean-up' in nature.

4) Why are these Amendments being put forward now?

When the Governance Task Force was created two years ago, it was decided that it was appropriate to make necessary (and easier to accomplish) By-Law changes first. That effort was successfully completed in September 2023. It was always intended that the next step would be critical amendment changes to the KICA Covenants. The Governance Task Force has prioritized these 4 amendments first to send to the membership. The amendments related to the developer's board seat, architectural control functions, and enforcement provide important updates to the community's future governance. The Governance Task Force will continue to address potential changes to the KICA Covenants, to send to the membership for consideration at a later date.

5) Are other changes to the KICA Covenants, or otherwise to governance structures currently contemplated in a next phase?

Yes. An example would be inconsistency or gaps in certain decision processes outlined in the KICA Covenants.

6) Have we asked the Developer to consensually cede its right to appoint a KICA Board member and its architectural control of the Island?

Discussions with the Developer are ongoing. We remain hopeful that the Developer will agree to these changes consensually. In particular, the Developer, KICA and the Town of Kiawah, with the assistance of the Joint ARB Task Force, are engaged in a constructive process of transitioning certain architectural review functions to KICA. However, we cannot know at this time whether this effort will ultimately be successful or acceptable to all parties. Regardless of the success of these negotiations, KICA Covenants should specifically reflect this authority for architectural control by KICA.

7) Has the KICA Board approved these proposed Amendments in their present form?

Not yet. The Board has decided that it is important to receive Community (and other stakeholder) input, as well as legal opinion, before formally approving the Amendments. Board approval will be sought prior to asking Members for their vote of support.

Nonetheless, the members of the KICA Board are supportive of this effort and receive regular updates.

- 8) Have other major entities on Kiawah been consulted, and are they supportive of the four amendments?

We are presently in the process of discussing the proposed amendments with the Resort, the Developer, the Town, and the Conservancy. We have received valuable and constructive input in our discussions thus far. This process is continuing.

- 9) Assuming these Amendments are both beneficial and necessary, does the Task Force anticipate any difficulties in obtaining Membership approval.

Yes. Frankly, it is often challenging to reach a quorum in a director election and a quorum requirement for covenant amendments is higher. The thresholds for Amendment approval are: 1) achieving an initial quorum of 60%; and 2) at least 75% approval of those voting. That said, we believe the requisite Membership will find the proposed Amendments compelling, and with the assistance of our Staff we expect to launch a constructive communications effort with all Members.

- 10) What is the voting process?

A single ballot will be provided to each eligible property. Members will have the opportunity to vote separately "Yes", "No", or "Abstain" on each amendment.

- 11) What will happen if a Quorum is not achieved?

If the requisite quorum is not achieved, the KICA Covenants allow a second effort, at which time the quorum requirement is lowered to 50%. However, the approval threshold remains at 75% regardless.

- 12) Can I vote electronically?

Yes, all members will be able to vote electronically. KICA will utilize the same independent voting administrator it currently uses for director elections.

- 13) How can members be certain the voting process is both legal and fair?

The process will be examined by KICA's outside counsel to insure conformity with all relevant SC laws and regulations.

- 14) Will this Amendment process be costly?

Considerable time and effort will be extended by many people, especially Staff, to achieve amendment success. KICA will also have expenses related to its third-party voting administrator. That said, all Board members agree that this is a critical Community priority.

15) Has KICA staff participated in the development of the amendments?

Yes. KICA Staff has been engaged with the Governance Task Force and is currently playing an invaluable role in executing this multi-faceted process.

16) What is our formal Communication Plan?

With Staff, we have designed a multi-step process of Member messages, updates, community forum(s), website updates and general Community outreach. However, just as important is the informal support of Members who can reach out to friends and neighbors to encourage maximum participation. The formal communication plan has already begun with Board updates to the Membership and the scheduling of the current community forum, all of which has been communicated in KICA's regular weekly newsletters. This communications effort will continue until August when the votes is planned to be opened.

DEVELOPER BOARD SEAT AMENDMENT

17) If the Amendment relating to the Type E Member (Developer) passes, what continuing voting rights, if any, will the Developer retain?

The Developer will retain all voting rights prescribed in the KICA Covenants according to its property ownership status, *i.e.*, those rights afforded to Type A, B, C, and D Members. Presently, only the unique right of the E-Type Member to appoint a KICA Board Member is proposed to be eliminated.

18) If the Type E-Member Amendment passes, what will happen to the Board composition?

Assuming the Type E-Member Amendment passes, according to the KICA By-laws, the Board Member presently appointed by the Developer will remain on the Board until the KICA Annual Meeting, in March 2025. A new Board Member will be elected by the Membership for the seat to be vacated by the Developer's representative in the 2025 KICA Board election.

ARCHITECTURAL GOVERNANCE AMENDMENT

19) If the Architectural Governance Amendment is approved, what will the architectural review structure look like?

The Joint TOKI/ARB Task Force is presently moving to Phase III. Their goal will be to develop a plan to transition the architectural control functions from the Developer to the community. The task force will begin discussions and negotiations later in April and expects to deliver its recommendations later in 2024 to the KICA Board.

- 20) I own property in a condo regime and have not had any direct contact with the ARB processes. Why is this amendment important to me?

Architectural control functions impact the look and feel of your regime, as well as the overall aesthetic of Kiawah Island, so they are important to every Kiawah owner, regardless of the type of property owned.

ENFORCEMENT AMENDMENT

- 21) One of the amendments, *i.e.*, the Enforcement Amendment, was voted on and approved years ago by the Membership, why is it necessary to re-approve now?

Pursuant to the SC Homeowner's Association Act of 2018, which went into effect just after the 2018 Enforcement Amendment to the KICA Covenants was adopted, requires that all documents, including those in effect prior to June 1, 2018, be recorded with Charleston County. This was not done. While the Board has received legal opinion that it could record the 2018 amendment, it is believed that this should be sent back to the membership for consideration, as the membership has changed over the past 6 years. While the Board believes a good case can be made that KICA is currently able to enforce its rules, the Board believes this amendment will solidify this important enforcement authority and remove any ambiguity. This amendment also provides additional enforcement authority (liens and self-help) to permit the Board to enforce its rules with respect to properties which are not complying with KICA's current enforcement tools and are potentially impacting the surrounding neighborhood.

- 22) Is the proposed Enforcement Amendment too stringent?

The enforcement powers conveyed are necessary and consistent with the KICA Board's priorities and are ultimately for the benefit of all Members. The enforcement provisions include a robust appeals process, and the KICA Board has ultimate oversight of enforcement. Finally, the powers conveyed here are both legal and consistent with many, HOAs.

- 23) Will passage of the Enforcement Amendment require additions to KICA's Rules & Regulations.

No. This Amendment is strictly related to enforcement. Any changes to KICA rules or regulations would be considered separately by the KICA Board.