

2024 KICA Covenant Amendments - FAQ's

1. Why are these proposed amendments important to the KICA Community?

KICA's documents were written decades ago and in a number of instances, are inconsistent with the nature and aspirations of the current Community. The process of reviewing and carefully modifying our core governance documentation is a strategic priority, builds on successful efforts of prior Boards/Governance Taskforces, and will continue in the future.

2. Why are each of the amendments an important enhancement to KICA governance?

A1. The first proposed amendment [Developer Board Seat & Type E Member] removes the right of the Developer to appoint a Director to the KICA Board. Your Board believes that while this appointment right may have been appropriate during the earlier development of our Island, it now gives the Developer disproportionate representation and influence. More importantly, we believe that ALL members of the Board should be elected by the eligible Members.

A2. The second proposed amendment [Architectural Control Authority] authorizes KICA to exercise or control an architectural review function. The Board believes that it is no longer appropriate for the Developer to control the ARB. We anticipate that a consensual transition plan may be agreed with the Developer - this is the focus of a Board authorized transition team. This amendment provides the Association, through the KICA Board, the broad authority necessary to exercise or control such a function whether transferred consensually (as we expect) or otherwise.

A3. The third proposed amendment [Rules, Regulations and Enforcement] fully empowers the Board to create and amend the Association Rules & Regulations - and related enforcement rights and procedures - that are critical to our community. A necessary next step is the upgrade of our existing Rules & Regulations, but to do this in full view of the Membership by Board action, not by the cumbersome and inflexible amendment process.

A4: The fourth proposed amendment [Administrative & Notices] is more administrative than core governance. It updates certain relevant terminology in the Association's Covenants and it clarifies the mechanics for official notices from the Association to its Members.

3. Why now?

As mentioned above, these amendments represent an ongoing effort of the Association to review and update its core governing documents. The first task was to update the Association By-laws which was completed last year. This effort has focused on the

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Association's Covenants and is far from complete, but the amendments discussed above create significant step-changes which the Board feels are both necessary and timely.

4. Why is this amendment process being launched in the summertime?

These issues are important and a strategic priority. The timing of the E-Member amendment, if approved, will enable the new elected Director seat to be filled during the typical Board election cycle, beginning in November of 2024 and would avoid the cost and delay that a Special Election would entail. Finally, the KICA team is confident that it has a communications plan that will be effective in reaching Members and explaining the logic and value of the amendments.

5. Why didn't KICA enforce its derivative rights under the expired Development Agreement ('ARDA') between TOKI and the Developer ("Company") to eliminate the Developer's Board appointment right and challenge the authority of the existing ARB?

The Board has carefully considered the arguments and proposals to take this path. The Board believes the amendment process is a clearer, less expensive and more successful path to necessary change. And we believe that the Membership will be persuaded by the strategic value of these governance amendments.

6. What efforts have been made to ensure the entire Membership is fully informed about the amendments and the voting process?

KICA and the Board have communicated with and already received valuable feedback from the Community. The critical next step is for the Board to discuss and approve these amendments at its regular Board meeting in July. The education and outreach effort will continue across all our communication channels until the amendment vote occurs in September, with an effective date 60 days after approval. The Board has committed to be responsive to every issue or concern.

7. Is the Board confident that the amendments will be approved?

Yes - because the Board is convinced that each of the amendments is a meaningful improvement in the Association's governance and that each is consistent with KICA's Strategic Statement. However, the Board recognizes that all change is hard. It is also a challenge, regardless of the merit of the proposed amendments, to achieve the very high required quorum (initially 60%) and the approval level (75% of eligible votes cast). We hope and believe that individual Members will study and understand the logic of these amendments and will support their passage with their friends and neighbors on Kiawah.

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8. Has KICA and the Board gotten legal advice on each of the amendments from competent SC counsel?

Yes. We plan to publish each of the questions/issues we've asked our legal counsel to review. The Board will not proceed unless it is fully comfortable with the responses. We do NOT intend to make public the specific communications we have with counsel.

9. What happens if one or more of the amendments fails?

While we are confident that what the Board is proposing is clearly beneficial for the Association and its Members, we understand the process is challenging. If we are not successful, in whole or part, the Board will try to understand why and choose a path that is best for the Membership.

10. How can the Membership be confident that the voting and voting processes will be fair?

The process will be very transparent and is time tested. The ballot and voting procedures will be reviewed by SC counsel. An independent and experienced voting administrator will be employed. We expect the vast majority of our Members to vote electronically on a voting platform KICA has used successfully in the past for Board elections.

11. Does the Developer support the four amendments to the KICA Covenants?

Developer Board Seat & Type E Member: The Developer does not support removal of the Type E membership and board appointment right given the historical benefit to the community of board level participation by the Developer.

Architectural Control Authority: The Developer supports revisions to the architectural review authority language in the KICA Covenants. The existing ARB is actively working with the Joint Taskforce for ARB to guide an orderly transition as previously committed by the Developer. Adjustments to the current KICA Covenants language are needed to support this endeavor.

Rules, Regulations and Enforcement: The Developer supports empowering the KICA Board to establish Rules & Regulations with the ability to enforce as needed to uphold Kiawah's property values and member experience.

Administrative & Notices: The Developer supports these administrative corrections and updates.

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12. Is KICA Staff supportive of these amendments?

Yes. Senior KICA Staff have been an integral part of the entire process - from start to finish.

13. How exactly is Quorum calculated? And how is 'approval' defined?

First, quorum is achieved when 60% of the total possible votes of the Membership have been cast. If this quorum threshold is not met, our Covenants provide for a second round of voting where the quorum threshold is 50%. The ballot, which will be reviewed by SC counsel, is designed in such a way that every completed and submitted ballot will count for quorum. Voters will have an opportunity to vote separately on each amendment: YES; NO; or ABSTAIN. 75% of the non-abstaining votes must be in favor of each Amendment for the Amendment to be approved.

TYPE E MEMBER AMENDMENT QUESTIONS

14. How will the Type E Member Amendment affect the voting rights of the Developer ("Company")?

If adopted, the amendment will terminate the Developer's right to appoint a member of the KICA Board and will abolish the special "Type E" membership category. To the extent the Developer continues to qualify as a Type A, B, C or D Member by virtue of its property holdings, it may vote in the manner and to the extent prescribed for such Membership category. No other rights of the Developer in the General Covenants or the KICA Covenants will be affected.

15. What will happen to the Board composition if this amendment is approved?

The vacancy created by the amendment passage will be filled as soon as practical. We expect this will be in the regular Board election process that will begin in November of 2024. The size of the Board will therefore not change, but will have 7 members, all elected by the Membership.

ARB AMENDMENT QUESTIONS

16. Why should I vote in favor of this amendment unless I know exactly how a KICA ARB would function and be organized?

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Every aspect of a new ARB is being studied by a dedicated Joint Task Force for ARB. No transition should take place without detailed plans being shared with the community (and feedback received) and formally approved by the Board. We are currently in Phase III of this effort. Much more work is required, and changes will need to be negotiated with the Developer if this transition is going to occur consensually. However, we feel it makes sense to grant KICA the authority to approve a new consensually created ARB or if deemed necessary, to exercise or control this function for all KICA Properties (as defined in the Covenants) on its own. This will avoid further extensive delay when a structure and operating plan is prepared and fully approved.

17. Does KICA even have the staff and skills necessary to operate the ARB today?

No. The Board clearly recognizes the importance and value of a professional ARB that is adequately staffed. This is an essential component of any transition plan. It is certainly possible that a transition plan will be executed in several phases over a multi-year period.

18. Does the proposed Architectural Control Amendment address member complaints directed to the current ARB, such as those relating to issues of arbitrary enforcement, excessive deposits, etc.?

The proposed Architectural Control Amendment does not provide specific rules or regulations regarding how any new ARB will make decisions, including those regarding the assessment of fees, penalties or deposits. Nor does the proposed amendment specifically contemplate the exact form any new ARB will take. A separate Joint Task Force for ARB is presently dealing with those issues. That being said, the Board acknowledges that strict adherence to development standards – even when they seem annoying – have contributed to an exceptional aesthetic (and property values) on Kiawah Island. The Board believes any new future KICA ARB must be consistent, objective and fair. It is reasonable to expect that a new ARB under the umbrella of KICA will strive to be attuned to the legitimate concerns of its Members and will apply clear and appropriate design standards in order to ensure that property values are maintained. The proposed Architectural Control Amendment does require that any new ARB maintain records of all actions taken by such ARB.

19. Will the new ARB require a general operating subsidy from the Membership of KICA?

A sensible and careful budget for any new ARB will be required, and formally reviewed and approved by the Board as part of any transition plan. This is a particular focus of the Joint Task Force for ARB.

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20. Don't the General (aka Developer) Covenants reserve architectural control to the Developer ("Company")?

Yes. The Developer is currently working with the Joint Task Force for ARB on a transition plan. The proposed amendment removes current limiting language and provides KICA with broad authority to manage these functions in the future.

ENFORCEMENT AMENDMENT QUESTIONS

21. Wasn't the 2018 Amendment covering this topic approved by the Membership?

Yes. However, the 'approved' amendment was not properly recorded with Charleston County in the timeframe required by SC Law. The Board considers the 2018 amendment to be moot. However, it is important to note that our existing Rules and Regulations were properly approved and recorded with the County and are enforceable.

22. Even if the earlier amendment was not properly approved, isn't the framework that it represented appropriate?

Yes. Initially, the Governance Task Force sought to replicate that framework in a new amendment. However, after considerable discussion, the GTF concluded that guidelines for rules and regulations are too complex to try to define via the Covenant process and a more general approach was better, granting to the Association the right to adopt rules, regulations and enforcement rights. The Board believes that fair and transparent Association rules, regulations and enforcement measures are a vital and appropriate concern of the Membership. The Board is committed to a comprehensive review and updating of the Association's Rules and Regulations. Any recommended changes will be formally approved in a public Board meeting after thorough vetting with and by the Community.

23. Will a timely 'appeals' process be part of our Rules framework?

Yes. Likewise, there will be appropriate Notice provisions/protections.

24. Will enforcement of our Rules be fair and will fines and other sanctions 'fit the crime'?

That is the intent of the Board and KICA Staff. The Island is increasing in both population and usage. Unfortunately, bad behavior does occur, albeit rarely, and our rules, regulations and enforcement measures need to accommodate those situations - for the benefit and safety of all our Members.

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25. When will property liens be permitted?

Liens on property is one of the most extreme enforcement measures any community association has. Its use is/will be limited to the most serious and flagrant rules violations, e.g. non-payment of assessments, or non-payment of fines for serial rules infractions.

26. How can we protect against excessive penalties and citations for trivial 'offenses'.

First, a strong appeals process where the Member concerns are heard by the KICA Board. Secondly, the entire process of enforcement is an important oversight responsibility of the Board.

ADMINISTRATIVE AMENDMENT QUESTIONS

27. What is the purpose of this amendment?

This amendment is administrative in nature. It updates terminology and governmental references that have changed since the Covenants were last revised/approved. It clarifies the existing voting approval percentages and updates the provisions relating to official 'Notices' to Members.

28. Isn't this amendment a distraction to the other important amendments?

We hope not. Unfortunately, the Covenants are out of date, and contain ambiguities. While a single 're-write' might be possible, such a process would be very challenging. This Amendment, while administrative in nature, is still important.

June 25, 2024