

# TOWN OF KIAWAH ISLAND

## Ordinance 2015-01

### AN ORDINANCE TO AMEND VARIOUS SECTIONS OF THE MUNICIPAL CODE OF THE TOWN OF KIAWAH ISLAND TO CLARIFY THAT THE MUNICIPAL COURT HAS SUBJECT MATTER JURISDICTION OVER ORDINANCE VIOLATIONS AND THE APPROPRIATE PENALTIES FOR SUCH VIOLATIONS IN ACCORDANCE WITH THE SOUTH CAROLINA CODE OF LAWS

**WHEREAS**, S.C. CODE Section 14-25-45 states in relevant part that “Each municipal court shall have jurisdiction to try all cases arising under the ordinances of the municipality for which established.”

**WHEREAS**, S.C. CODE Section 14-25-45 also states in relevant portion “The court shall have no jurisdiction in civil matters.”

**WHEREAS**, the municipal court has issued a Final Opinion and Order in the case of **The Town of Kiawah Island vs. Strauchon Painting, Inc.** where the municipal court indicates that “the only issue before the court is whether this court has subject matter jurisdiction to entertain a case in which the Town is seeking a civil fine under this ordinance.”

**WHEREAS**, the ordinances referenced by the municipal court are the failure to obtain a building permit as required by Section 9 – 181 of the Municipal Code and the corresponding assessment of a “civil fine” of two hundred (\$200) dollars as provided for in Section 9 – 124 of the Municipal Code.

**WHEREAS**, the municipal court concluded that since the Town seeks a “civil fine,” the municipal court lacks subject matter jurisdiction and accordingly the municipal court dismissed the case for that reason.

**WHEREAS**, the Town hereby wishes to amend its Municipal Code so as to remove any and all reference to “civil fines,” replace all such references with “penalties or penalty,” state its intent to vest the municipal court with jurisdiction to try all cases arising under the ordinances of the municipality for which the municipal court was established, and express its intent that all such ordinance violations are penal in nature, and to assess penalties for any such violations as provided for by the South Carolina Code of Laws.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED**, by the Council of the Town of Kiawah Island, South Carolina and it is ordained by the authority of said Council.

#### Section 1. Purpose

The purpose of this Ordinance is to remove any and all reference to “civil fines,” replace all such references with “penalty or penalties,” express an intent to vest the municipal court with jurisdiction to try all cases arising under the ordinances of the municipality for which the municipal court was established and express an intent that all such ordinance violations are penal in nature and to assess penalties for all such violations as provided for by the South Carolina Code of Laws.

## **Section 2. Ordinance**

The following Sections of the Municipal Code shall be amended as follows:

1. **Sec. 1-107. - General penalty; continuing violation.**
  - (a) In the penultimate line the word “fine” shall be replaced with “ordinance violation penalty.”
2. **Sec. 2-311. - Form of ordinances and resolutions.**
  - (3) Replace “a fine or other” with “an ordinance violation.” These words are replaced twice in this subsection.
3. **Sec. 4-320. - Violations**

Replace “fine” with “ordinance violation penalty.”
4. **Sec. 4-325. - Council’s authority to provide amnesty and waive penalties.**

Delete from the first line “and fines.”
5. **Sec. 4-604. - In the second line replace “a fine” with “an ordinance violation penalty.”**
6. **Sec. 4-707. - Violations and Penalties.**
  - (b) In the penultimate line replace the word “fine” with “ordinance violation penalty.”
7. **Sec. 6-106. - Fines and Penalties.**
  - (a) After the word “fine” add “, an ordinance violation penalty,”
8. **Sec. 8-116. - Penalties**
  - (c) The words “a fine” shall be replaced with “an ordinance violation penalty.”
9. **Sec. 9-124. - Violation Penalties.**
  - (1) *Violation; mandamus and injunctive relief; penalty*
    - (a) Replaced with the following: For a violation of the codes or regulations adopted pursuant to this article, the building official, adjacent or neighboring property owner who would be damaged by the violation, in addition to other remedies, may apply for injunctive relief, mandamus, or other appropriate proceeding. A court may grant temporary injunctive

relief upon receipt of a verified affidavit asserting imminent danger or emergency situation.

- (b) Replace with the following: A person, firm, business, corporation, or other entity found to be in violation of this Code must receive a citation and pay an ordinance violation penalty in an amount not to exceed two hundred (\$200.00) dollars. Before being charged with a second violation the person, firm, business, corporation, or other entity must be given ten (10) business days from the date of the issuance of the citation to remedy the violation or submit a plan for correcting the violation.
- (c) Replace with the following: A person, firm, business, corporation, or other entity who fails to correct the violation or submit a plan for correcting the violation within ten (10) business days of the issuance of the citation must pay an ordinance violation penalty not to exceed five hundred (\$500.00) dollars. Each day a violation continues is a separate offense.

10. **Sec. 9-125. - Licensing requirements.**

Replace with the following: A person, firm, business, corporation, or other entity who engages in construction activity within the boundaries of the Town of Kiawah Island and fails to obtain a Town of Kiawah island contractor license, or, is found to be an unlicensed contractor as required by the South Carolina Code of Laws, shall be subject to a maximum ordinance violation penalty of five hundred (\$500.00) dollars. Each day the violation exists is a separate offense.

11. **Sec. 9-133. - Unlawful continuance.**

Shall be replaced with the following: Whenever the building official issues a citation alleging an ordinance violation where no specific penalty is provided, the ordinance violation shall be punished by an ordinance violation penalty of not more than five hundred (\$500.00) dollars or imprisonment not exceeding thirty (30) days, or both. Each day an ordinance violation continues shall constitute a separate offense.

12. **Sec. 9-141. - General.**

(4) The words "a fine" appearing in the fourth line shall be replaced with "an ordinance violation penalty." The word "fine" appearing in the sixth line shall be replaced with the words "ordinance violation penalty" and the word "is" shall be replaced with the words "shall be."

13. **Sec. 9-201. - Licenses.**

- (a) In the first sentence insert the word "a" before the word "valid."
- (d) Shall be replaced with the following: Commencing to perform construction activities on properties within the Town of Kiawah Island when the undertaking is two hundred (\$200.00) dollars or more prior to obtaining a contractor's license from the State of South Carolina and a permit from the Town of Kiawah Island shall constitute an ordinance violation and shall result in an ordinance violation penalty not to exceed

five hundred (\$500.00) dollars. Each day the ordinance violation continues constitutes a separate offense.

14. **Sec. 10-102. - Penalties.**  
Replace with the following: Failure to comply with any provisions of this Chapter shall subject the violator to the ordinance violation penalties set forth elsewhere in this Code. Additionally, the violator may be subject to additional federal penalties as set forth in 33 USC 1150 et seq.
15. **Sec. 12-212. - Violations.**  
(10) Shall be replaced with the following: Each day of continued violation shall be considered a separate offense for purposes of computing cumulative ordinance violation penalties or criminal penalties.
16. **Sec. 14-5. - Penalties for violation.**  
Shall be amended as follows: "180 days" shall be replaced with "30 days."
17. **Sec. 15-311. - Possession of dangerous animal, first offense.**  
Shall be amended as follows: Delete "and, upon conviction of a subsequent offense, must be fined \$1,000.00 none of which may be suspended or remitted."
18. **Sec. 15-401. - Offering bribe to induce another to procure public office.**  
Shall be amended as follows: In the last sentence replace "and suffer imprisonment" with "or imprisonment for thirty days, or both."
19. **Sec. 15-503. - Birds of prey regulations.**  
(b) Shall be deleted.  
(c) Shall be deleted.
20. **Sec. 15-503. - Limit on possession of game fish.**  
(b) The words "60 days" in the fourth line shall be replaced with "30 days" and the words "no more than six months" shall be deleted.
21. **Sec. 17-203. - Penalties.**  
(b) Shall be eliminated in its entirety.

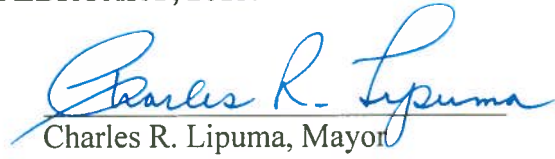
### **SECTION 3 Severability**

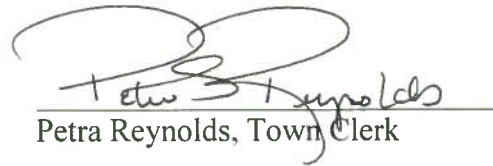
If any part of this Ordinance is held to be unconstitutional, it shall be construed to have been the legislative intent to pass said Ordinance without such unconstitutional provision, and the remainder of said Ordinance shall be deemed to be valid as if such portion had not been included. If said Ordinance, 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 second reading approval.

**PASSED, APPROVED, AND ADOPTED BY COUNCIL FOR THE TOWN OF  
KIAWAH ISLAND ON THIS 10<sup>th</sup> DAY OF FEBRUARY, 2015.**

  
Charles R. Lipuma, Mayor

  
Petra Reynolds, Town Clerk

First Reading Approval: January 7, 2015

Second Reading Approval: February 10, 2015