



ORDINANCE NO. 2006 - 05

ORDINANCE AMENDING COLLIER COUNTY ORDINANCE NO. 2002-27 CREATING THE PELICAN BAY MUNICIPAL SERVICE TAXING AND BENEFIT UNIT; PROVIDING FOR: MODIFICATION OF PURPOSE RELATING TO THE MANGROVE FOREST PRESERVE; CHANGE OF NAME OF ADVISORY COMMITTEE TO THE PELICAN BAY SERVICES DIVISION BOARD; REVISION OF APPOINTMENT PROCEDURES UPON VACANCY; REVISION OF DUTIES OF THE ADVISORY COMMITTEE (PELICAN BAY SERVICES DIVISION BOARD) AND THE COUNTY MANAGER; MULTIPLE VICE CHAIRS; PROVIDING FOR CONFLICT AND SEVERABILITY; PROVIDING FOR INCLUSION IN CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on May 28, 2002, the Collier County Board of County Commissioners (the "Board") working with the Pelican Bay Municipal Service Taxing and Benefit Unit Advisory Committee residential and commercial property owners of Pelican Bay, adopted Collier County Ordinance No. 2002-27 pertaining to the Pelican Bay Municipal Service Taxing and Benefit Unit; and

WHEREAS, after three and one-half years of administration and practical application of Ordinance No. 2002-27, the Pelican Bay Municipal Service Taxing and Benefit Unit Advisory Committee has considered and requested the Board to consider and adopt certain discrete revisions amending Ordinance No. 2002-27 and has coordinated such desire with the County Manager; and

WHEREAS, the Board, having considered the request of the Advisory Committee, does hereupon amend Collier County Ordinance No. 2002-27.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

SECTION ONE: AMENDMENT TO SECTION ONE OF COLLIER COUNTY ORDINANCE NO. 2002-27:

Section One is hereby amended to read as follows:

SECTION ONE: Creation of the Pelican Bay Municipal Service Taxing and Benefit Unit.

Pursuant to Chapter 125, Florida Statutes, and Collier County Ordinance No. 88-23, the Pelican Bay Municipal Service Taxing and Benefit Unit (hereinafter "Unit") is hereby created for the purpose of providing street lighting, water management, extraordinary law enforcement service and beautification, including but not limited to beautification of recreation facilities, sidewalk, street and median areas, identification markers, the maintenance of conservation or preserve areas, including

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COLLIER COUNTY, FLORIDA
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the restoration of the mangrove forest preserve and to finance the landscaping beautification of only that portion of U.S. 41 from Pine Ridge Road to Vanderbilt Beach Road. While repealing prior ordinances pertaining to the Unit, the purpose of this Ordinance is to adopt a new ordinance that consolidates said preexisting ordinances into one easily read and understood ordinance, with some modifications that express the will of the property owners within the Unit.

SECTION TWO: AMENDMENT TO SECTION FOUR OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Four is hereby amended to read as follows:

SECTION FOUR: Purpose; Powers.

The Unit is formed for the purpose of providing street lighting, water management, ambient noise management, extraordinary law enforcement service and beautification, including but not limited to beautification of recreation facilities, sidewalk, street and median areas, identification markers, the maintenance of conservation or preserve areas including the restoration of the mangrove forest preserve and to finance the landscaping beautification of only that portion of U.S. 41 from Pine Ridge Road to Vanderbilt Beach Road in the above-described taxing and benefit unit and to that end shall possess all the powers to do all things reasonably necessary to provide such services.

SECTION THREE: AMENDMENT TO SECTION FIVE OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Five is hereby amended to read as follows:

SECTION FIVE: Annual Estimates of Expenses; Taxation & Assessment Rate.

For the purpose of carrying into effect and the administration of this Ordinance, the Board of County Commissioners shall annually, at the time required by general budgetary law, review and adopt an itemized estimate of the amount of money required to carry out the business of the Unit for the next fiscal year, which shall be from October 1 to and including September 30 following (the "Budget"). The proposed Budget shall be prepared ~~in consultation with~~ and reviewed by the ~~Municipal Service Taxing and Benefit Unit Advisory Committee (the "Committee")~~ Pelican Bay Services Division Board prior to its consideration by the Board of County Commissioners and after review by the ~~Committee~~ Pelican Bay Services

Division Board, the budget shall be heard, considered and adopted by the Board of County Commissioners as provided for herein. The proposed Budget shall describe the purpose or purposes for which the moneys are required and the amount necessary to be raised by taxation and special assessment within the Unit. At the time and place for establishing the annual rate of taxation for County purposes, the Board of County Commissioners shall fix and cause to be levied on all property within the Unit subject to taxation or assessment a millage and assessment sufficient to meet the requirements of the Budget; provided, however, the total millage shall not exceed the millage authorized by law for municipal service, taxing and benefit units.

SECTION FOUR: AMENDMENT TO SECTION SEVEN OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Seven is hereby amended to read as follows:

SECTION SEVEN: Creation of the Pelican Bay Municipal Service Taxing and Benefit Unit Advisory Committee Known as the Pelican Bay Services Division Board.

Concurrent with the passage of the Ordinance, an eleven (11) member advisory committee to be known as the Pelican Bay Services Division Board (PBSD Board) ~~Municipal Service Taxing and Benefit Unit Advisory Committee~~ is hereby created. Those individuals who are members of the PBSD Board ~~Committee~~ pursuant to Collier County Ordinance No. 90-111, as amended, as of the moment prior to the effective date of this Ordinance, shall continue on as members of the PBSD Board ~~Committee~~ until March 31st of the year in which their term would have expired as set forth in the prior ordinances, and shall continue to hold over and serve in that capacity until their position is filled as provided for in this Ordinance.

SECTION FIVE: AMENDMENT TO SECTION EIGHT OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Eight is hereby amended to read as follows:

SECTION EIGHT: Composition, Nomination and Appointment.

A) The PBSD Board ~~Committee~~ shall be representative of the residential, business and commercial interests and landowners in Pelican Bay. To that end, nine (9) of the PBSD Board ~~Committee~~ members shall be representative of the residential interests within the Unit and two (2) of the PBSD Board ~~Committee~~ members shall be representative of the commercial and business interests within the Unit.

Members of the PBSD Board~~Committee~~ shall be appointed by and serve at the pleasure of the Board of County Commissioners pursuant to the procedure outlined herein. The nine (9) PBSD Board~~Committee~~ members representative of the residential interests within the Unit shall be residents of and qualified electors within the Unit. The two (2) PBSD Board~~Committee~~ members representative of the commercial/business/other interests shall be residents of and qualified electors in Collier County.

Appointment of members to the PBSD Board~~Committee~~ shall be by resolution of the Board of County Commissioners, which resolution shall set forth the date of appointment and the term of office.

Any member of the PBSD Board~~Committee~~ who ceases to meet the requisite qualifications during his or her term of office shall immediately advise the Board of County Commissioners in writing of such change in status. Upon the Board of County Commissioners receiving such notice, otherwise becoming aware of such vacancy, or if a vacancy occurs by any other process, the Board of County Commissioners shall declare the position to be vacant and shall promptly consider filling the vacant position with a person from among the unsuccessful candidate(s) vying for the position from the immediately preceding recommendatory balloting that receives recommendation from the PBSD Board. In the event the PBSD Board should fail to provide its recommendation to the Board of County Commissioners within twenty days of the Board of County Commissioners being informed of "member's change in status," the Board of County Commissioners shall appoint the recent unsuccessful candidate that received the greatest number of votes among those unsuccessful candidates. In the event that there are no prior unsuccessful candidates available for appointment to the PBSD Board as provided herein, the vacant position shall be filled pursuant to the procedures of Collier County Ordinance No. 2001-55 including as may be amended or its successor ordinance. meeting the requisite qualifications as outlined herein: i) who continues to desire to be appointed and ii) who, in the immediately preceding recommendatory balloting received the greatest number of votes among the unsuccessful candidates vying for the position (i.e. "Residential interest" or "Commercial/Business/Other interest") which has become vacant.

B) The terms and provisions of Section Six of Collier County Ordinance No. 2001-55, titled "PROCESS OF APPOINTMENT" shall not be applicable to appointment of members to the Unit.

C) Upon adoption of this Ordinance, all of the members of the PBSD Board~~Committee~~ shall be appointed by, and all vacancies shall be filled by, the Board of County Commissioners, in the manner outlined herein, beginning with appointment to the PBSD Board~~Committee~~ of members to fill expiring memberships.

All appointments of members to the PBSD Board~~Committee~~ shall be at the sole and complete discretion of the Board of County Commissioners. Provided however, that the Board of County Commissioners will take into consideration and give great weight to the recommendations of the property owners within the Unit, utilizing the process outlined herein. Beginning with the second Tuesday in December, 2002, and each second Tuesday in December thereafter, the Board of County Commissioners shall publicly announce and advertise all current vacancy(ies) on the PBSD Board~~Committee~~ as of that date and shall request that applications be submitted to the Board of County Commissioners to fill the expiring~~expired~~ term(s). All such applications shall be submitted in writing to the Board of County Commissioners no later than 28 days after said announcement as determined by the postmark on mailed applications and the time stamp on hand delivered applications. The name(s) of all appropriately qualified individuals timely submitted to the Board of County Commissioners shall be considered nominees for appointment to fill said expiring~~expired~~ term(s). The Board of County Commissioners shall then publish said list of nominees and the positions on the PBSD Board~~Committee~~ for which they have been nominated (i.e., for the "residential interests" or for the "commercial/business/other interests") and deliver a conformed copy thereof to the Clerk of Courts (the "Clerk").

The Clerk shall cause the name of each nominee as reported and published by the Board of County Commissioners to be included on the mail ballot, which ballot shall be mailed to all of the non-governmental property owners of the class (i.e. "Residential or Commercial/Business/Other") corresponding with the class for which the balloting is occurring ("Residential or Commercial/Business/Other") within the

Unit no less than thirty (30) days prior to the balloting date. Said balloting date being set by the Board of County Commissioners.

DE i. One (1) indivisible vote may be cast for each parcel in the Unit regardless of the number of persons who have an ownership interest in the property or the manner in which title is held by them, with each discrete parcel being those as listed by the Property Appraiser of Collier County and as approved by resolution of the Board of County Commissioners. Commercial/Business/Other owners cast ballots only for "Commercial/Business/Other interest" positions and Residential owners cast ballots only for "Residential interest" positions. Only one ballot shall be counted for each parcel. If multiple ballots are cast for the same parcel by owners of record, all ballots for that parcel will be deemed invalid. It is not the responsibility of the Clerk or the County Attorney to determine or select the ballot to be counted wherein multiple ballots for a parcel are cast as described herein.

ii. For purposes of determining record title owners of property entitled to cast ballots, the listed record title owners of property as evidenced by the Collier County Property Appraiser's tax rolls as of sixty (60) days prior to the balloting date shall be utilized and deemed conclusive. Not less than forty-five (45) days prior to the balloting date, the Property Appraiser shall provide the Clerk and the Board of County Commissioners with the list of all parcels within the Unit, each parcel's identification number, the names of the property owners and their addresses, with said list designating each parcel as either residential/commercial/other (based upon the Property Appraiser's classification system).

iii. The mail ballots shall be cast directly with the Clerk. At the place and time stated in the notice of the balloting published by the Board of County Commissioners, the Clerk, with the assistance of the County Attorney's Office, shall open and count the ballots, which have been returned to the Clerk as of the date and time stated in such notice of balloting, in a manner which the Clerk deems advisable and not inconsistent with the provisions of this Ordinance. Any member of the public shall be entitled to attend and observe. The determination of the Clerk and the County Attorney of validity of any ballot shall be final.

iv. The nominee(s) receiving a plurality of the ballots cast in each

category of membership shall be deemed the successful nominee(s) and their name(s) shall be reported and forwarded to the Board of County Commissioners. The Board of County Commissioners shall then, at their next regularly scheduled meeting, make the necessary appointments to fill said positions.

EF) The cost of the nomination and balloting process shall be borne by the Board of County Commissioners.

SECTION SIX: AMENDMENT TO SECTION NINE OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Nine is hereby amended to read as follows:

SECTION NINE: Terms of Office of the Pelican Bay Services Division Board.

In 2002, of the four (4) terms which are expiring: i) two (2) positions shall be filled with persons representative of the residential interests who shall each be appointed for a four (4) year term; and ii) two (2) positions shall be filled with persons representative of the commercial/business/other interests, wherein one (1) person will be appointed for a four (4) year term and one (1) person appointed for a two (2) year term. Thereafter, each appointment or reappointment shall be for a term of four (4) years. Each new term of appointment will begin on the date of appointment and expire on March 31st.

A member of the PBSD Board~~Committee~~ may be reappointed by the Board of County Commissioners without limitations. Appointments to fill any vacancies on the PBSD Board~~Committee~~ shall be for the remainder of the unexpired term of office.

SECTION SEVEN: AMENDMENT TO SECTION TEN OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Ten is hereby amended to read as follows:

SECTION TEN: Removal From Office; Failure to Attend Meetings.

A) Any member of the PBSD Board~~Committee~~ may be removed from office by a majority vote of the Board of County Commissioners.

B) Notwithstanding the provisions of Collier County Ordinance No. 2001-55 as to attendance, if any member of the PBSD Board~~Committee~~ fails to attend two (2) consecutive Board~~Committee~~ meetings without a satisfactory excuse,

as determined by the PBSD Board~~Committee~~, or if a member is absent from more than one-half of the PBSD Board~~Committee~~'s meetings in a given fiscal year, the PBSD Board~~Committee~~ shall declare the member's seat to be vacant and the vacancy shall be filled by the Board of County Commissioners in conformance with this Ordinance.

SECTION EIGHT: AMENDMENT TO SECTION ELEVEN OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Eleven is hereby amended to read as follows:

SECTION ELEVEN: Officers; Quorum; Rules of Procedure.

A) At its earliest opportunity, the membership of the PBSD Board~~Committee~~ shall elect a chairman and vice chair~~man~~ from among the members. Officers' terms shall be for one (1) year, with eligibility for re-election.

B) The presence of six (6) or more members shall constitute a quorum of the PBSD Board~~Committee~~ necessary to take action and transact business. In addition, an affirmative vote of a majority of the members present shall be necessary in order to take action, except that an affirmative vote of seven (7) or more members present shall be required to recommend the Budget for the Unit to the Board of County Commissioners.

C) The PBSD Board~~Committee~~ shall, by majority vote of the entire membership, adopt rules of procedure for the transaction of business of the PBSD Board~~Committee~~ and shall keep a detailed record of meetings, resolutions, findings and determinations.

SECTION NINE: AMENDMENT TO SECTION TWELVE OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Twelve is hereby amended to read as follows:

SECTION TWELVE: Reimbursement of Expenses.

Members of the PBSD Board~~Committee~~ shall serve without compensation, but shall be entitled to receive reimbursement for expenses reasonably incurred in the performance of their duties upon prior approval of the Board of County Commissioners after approval by the PBSD Board.

SECTION TEN: AMENDMENT TO SECTION THIRTEEN OF COLLIER COUNTY

ORDINANCE NO. 2002-27

Section Thirteen is hereby amended to read as follows:

SECTION THIRTEEN: Functions, Powers and Duties of the Pelican Bay Services Division Board~~Committee~~.

The functions, powers and duties of the PBSD Board~~Committee~~ shall be as follows, and shall be carried out consistent with the provisions of the Memorandum of Understanding/ Letter of Understanding referenced herein:

A) With the assistance of the County Manager, provide input to the Board of County Commissioners in carrying out the purposes of the Pelican Bay Municipal Service Taxing and Benefit Unit as set forth in this Ordinance.

B) Upon any decision by the Board of County Commissioners to dissolve, merge or otherwise change or discontinue the functions or services provided by the Pelican Bay MSTBU~~Improvement District~~, the PBSD Board~~Committee~~ shall be prepared to and shall aid, assist and provide input to the County Manager and the Board of County Commissioners, within the time frame requested, in effectuating a smooth and expeditious transfer of street lighting, water management and beautification services, responsibilities and obligations to the Unit.

C) With the assistance of the County Manager, to prepare and recommend to the Board of County Commissioners an itemized Budget of the amount of money required to carry out the business of the Unit for the next fiscal year.

D) The PBSD Board~~Committee~~ shall recommend work programs and priorities to the Board of County Commissioners in accordance with the adopted Budget or Budget amendments which may be adopted by the Board of County Commissioners in accordance with law. The execution of work programs shall be under the direct supervision and responsibility of the Pelican Bay Services Division Board~~County Manager with the assistance of the Committee~~ and to be executed by the Pelican Bay Services Division staff with the assistance of any additional County staff needed in accordance with the Memorandum of Agreement/Letter of Understanding. Said work may be performed under contract (in accordance with law and County policy) or by County forces.

E) To enter into a Memorandum of Agreement/Letter of Understanding with the Board of County Commissioners, and with the County Manager, wherein the parties outline that the intent in the operation of the Unit is to allow the PBSD Board~~Committee~~ to exercise decision and control of the day to day operational affairs of the Unit to the maximum extent allowed by law, unless and except when there is some overriding governmental reason to do otherwise.

SECTION ELEVEN: AMENDMENT TO SECTION FOURTEEN OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Fourteen is hereby amended to read as follows:

SECTION FOURTEEN: Duties of the County Manager.

The duties of the County Manager or his designee shall be:

A) To participate in the ~~administer~~ administration of the activities of the Unit in accordance with the Memorandum of Agreement/Letter of Understanding, and the established policies of the Board of County Commissioners, subject to the terms of this Ordinance.

B) To assist the PBSD Board~~Committee~~ performing its functions as defined by this Ordinance including the preparation of the proposed annual Budget.

~~C) Provide periodic written reports to the Committee and the Board of County Commissioners on the activities of the Unit and its finances.~~

CD) To require any contract manager or employee manager of the Unit to report directly to the County Manager.

SECTION TWELVE: AMENDMENT TO SECTION SIXTEEN OF COLLIER COUNTY ORDINANCE NO. 2002-27

Section Sixteen is hereby amended to read as follows:

SECTION SIXTEEN: Opportunity to Comment Prior to Initial Implementation or Use of the Unit's Taxing and Assessment Authority.

Prior to adopting the Budget for the Unit and implementing any taxing or assessment authority under this Unit, the Board of County Commissioners shall hold a public hearing upon reasonable notice in a local newspaper of general circulation. At such public hearing the Board of County Commissioners will consider the Budget recommended by the PBSD Board~~Advisory Committee~~ and provide the public the opportunity to comment on the proposed Budget and the implementation or use of the

Unit's taxing and assessment authority.

SECTION THIRTEEN: INCLUSION IN THE CODE OF LAWS AND ORDINANCE.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Collier County, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

SECTION FOURTEEN: CONFLICT AND SEVERABILITY.

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of the Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION FIFTEEN: EFFECTIVE DATE.

This Ordinance shall become effective upon filing with the Department of State.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 24th day of January, 2006.

ATTEST: BOARD
Dwight E. Brock, CLERK

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

Dwight E. Brock
BY: DEPUTY CLERK
Attest as to Chairman's
signature only.

BY: *Frank Halas*
Frank Halas, CHAIRMAN

Approved as to form and legal sufficiency:

David C. Weigel
David C. Weigel, County Attorney

05-000-00002/6

This ordinance filed with the Secretary of State's Office the 30th day of Jan, 2006 and acknowledgement of that filing received this 10th day of Feb 2006
By *Dwight E. Brock*
Deputy Clerk

STATE OF FLORIDA)

COUNTY OF COLLIER)

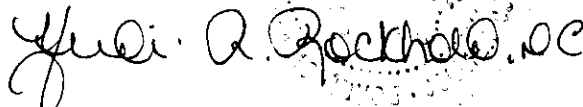
I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

ORDINANCE 2006-05

Which was adopted by the Board of County Commissioners on the 24th day of January, 2006, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 27th day of January, 2006.

DWIGHT E. BROCK
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners



Heidi R. Rockhold, DC

By: Heidi R. Rockhold,
Deputy Clerk