



ORDINANCE NO. 2009-05

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NO. 2002-27, AS PREVIOUSLY AMENDED AND CODIFIED AS ARTICLE LXI OF CHAPTER 122 OF THE COLLIER COUNTY CODE OF LAWS AND ORDINANCES, PERTAINING TO THE PELICAN BAY SERVICES DIVISION BOARD, BY AMENDING SECTION EIGHT, RELATING TO THE COMPOSITION, NOMINATION AND APPOINTMENT TO THE BOARD BY REVISING THE BALLOTING REQUIREMENTS; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; AND PROVIDING FOR 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 which in part created the Pelican Bay Municipal Service Taxing and Benefit Unit Advisory Committee; and

WHEREAS, Section Eight (C) of this Ordinance provides that nominees for appointment of members to the Pelican Bay Services Division Board (the "PBSD Board"), as renamed by Ordinance No. 2006-05, shall be included on a mail ballot to be sent to all of the non-government property owners of Pelican Bay, with the nominee(s) receiving a plurality of the ballots cast in each category of membership forwarded to the Board for appointment; and

WHEREAS, the Ordinance is silent as to whether it is necessary to conduct balloting when the number of nominees for a particular category of membership does not exceed the number of open positions; and

WHEREAS, the Board desires to amend the Ordinance to clarify that there is no need to conduct an election when the number of nominees for a particular category does not exceed the number of open positions for that category.

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

2009 FEB 26 AM 9:05
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

FILED

Words Underlined are added; Words ~~Struck-Through~~ are deleted.

SECTION ONE. Amendment to Section Eight of Collier County Ordinance No. 2002-27, as amended:

Section Eight is hereby amended to read as follows:

SECTION EIGHT: Composition, nomination and appointment.

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

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

Appointment of members to the PBSB Board 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 PBSB Board 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 PBSB Board. In the event the PBSB Board should fail to provide its recommendation to the Board of County Commissioners within twenty (20) 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 PBSB 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.

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 PBSB Board 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 PBSB Board of members to fill expiring memberships.

All appointments of members to the PBSB Board 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 PBSB Board as of that date and shall request that applications be submitted to the Board of County Commissioners to fill the expiring 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 term(s). The Board of County Commissioners shall then publish said list of nominees and the positions on the PBSB Board 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.

D) 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.

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

F) Notwithstanding the foregoing, if the number of nominees for the position which they have been nominated (i.e., for the "residential interests" or for the "commercial/business/other interests") does not exceed the number of open members for that position, then there shall be no balloting for such position. Instead, the list of nominees for the position shall simply be forwarded to the Board of County Commissioners, who, following public hearing on the matter, will make the necessary appointments to fill said positions.

SECTION TWO: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

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 Ordinances 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 THREE: 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 this 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.

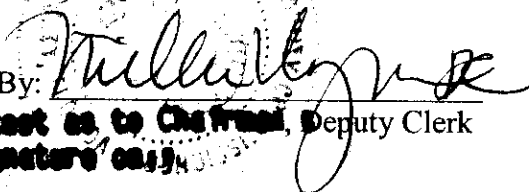
SECTION FOUR: EFFECTIVE DATE.

This Ordinance shall take effect 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 February, 2009.


ATTEST:
DWIGHT E. BROCK, Clerk

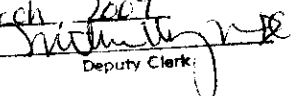
BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

By: 
Attest as to Chairman, Deputy Clerk
signature on 3/9/09

By: 
DONNA FIALA, Chairman

Approved as to form and
legal sufficiency:


Jeffrey A. Klatzkow
County Attorney

This ordinance filed with the
Secretary of State's Office the
26th day of February, 2009
and acknowledgement of that
filing received this 9th day
of March, 2009
By: 
Deputy Clerk

Words Underlined are added; Words ~~Struck Through~~ are deleted.

STATE OF FLORIDA)

COUNTY OF COLLIER)

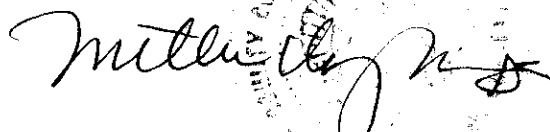
I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

ORDINANCE 2009-05

Which was adopted by the Board of County Commissioners on the 24th day of February, 2009, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 25th day of February, 2009.

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



By: Martha Vergara,
Deputy Clerk