

ORDINANCE NO. 04-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, CREATING THE HIDEAWAY BEACH DISTRICT AS A DEPENDENT SPECIAL DISTRICT AS EXPRESSED IN SECTION 189.4041, FLORIDA STATUTES; STATING THE PURPOSE, POWERS, FUNCTIONS, AND DUTIES OF THE DISTRICT; DESIGNATING THE GEOGRAPHIC BOUNDARY LIMITATIONS OF THE DISTRICT; STATING THE AUTHORITY OF THE DISTRICT; EXPLAINING WHY THE DISTRICT IS THE BEST ALTERNATIVE; DESIGNATING THE MEMBERSHIP, ORGANIZATION, COMPENSATION, AND ADMINISTRATIVE DUTIES OF THE GOVERNING BOARD OF THE DISTRICT; STATING ALL FINANCIAL DISCLOSURES, NOTICING AND REPORTING REQUIREMENTS; STATING THE METHODS FOR FINANCING THE DISTRICT; DECLARING THAT THE CREATION OF THE DISTRICT IS CONSISTENT WITH THE APPROVED LOCAL GOVERNMENT COMPREHENSIVE PLANS, PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE.

WHEREAS, the City of Marco Island, Florida (the "City") has received a request from the Hideaway Beach Association, Inc. for the creation of the Hideaway Beach District as a dependent special district in accordance with Chapter 189, Florida Statutes which district will include the property described in Exhibit A, attached hereto; and

WHEREAS, the City Council of the City is authorized without further vote of approval or ratification by any other person or entity to act on behalf of the City in respect of all matters addressed by or relating to this Ordinance; and

WHEREAS, the decision of the City acting through the City Council to establish the Hideaway Beach District is authorized by Chapter 189, Florida Statutes and the City of Marco Island's home rule authority and Article VIII of the Florida Constitution; and WHEREAS, the City has reviewed factors as required by Chapter 189, Florida Statutes and upon such review has determined that the establishment of the District is in the best interest of the City and its residents for their existing and future health, safety and welfare.

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AS FOLLOWS:

SECTION 1. ESTABLISHMENT OF DISTRICT. The City of Marco Island does hereby establish the Hideaway Beach District, hereinafter the "District" as a dependent special district within the meaning of Chapter 189, Florida Statutes, for all purposes consistent with, and as authorized by Chapter 189, Florida Statutes and all other applicable law.

SECTION 2. ESTABLISHMENT OF DISTRICT BOUNDARY. The geographic boundary for the District shall include and incorporate all property described in Exhibit A, attached hereto, all of which is located within the municipal boundaries of the City.

SECTION 3. PURPOSE, POWERS, FUNCTIONS, DUTIES AND AUTHORITY OF DISTRICT. The District shall have all powers as authorized by law, to effectuate its purpose to improve, renourish, preserve, maintain, monitor and provide public access to the beach property located within the boundaries of the District, and such other improvements and appurtenances within the District as may be necessary for the improvement, renourishment, preservation, maintenance, monitoring and providing of access to such beach lands. In addition, as necessary to effectuate its purposes as set forth herein, the District shall have the following powers:

- a. The right to exercise any and all provision or powers granted to the District by applicable law;
- b. The full and complete right to contract;
- c. The authority to prescribe, fix, maintain and regulate fees, charges or rents for the use of any District facilities or services;
- d. With the prior approval of the City by a resolution of the City Council, to borrow money, issue bonds and other types of securities, pledge or otherwise encumber any of the District's property or assets upon terms and conditions to be determined by the District Board;
- e. The right to adopt and enforce reasonable rules and regulations or procedures pertaining to the use, acquisition, maintenance, development, operation or disposal of any of the properties, services, facilities, or projects of the District;
- f. The right to do, and to perform all such things separately or in conjunction with a county, municipality, other special districts or other political subdivision of the state whether the same is within or without the territorial limits of the District;
- g. The authority to employ a staff and such other technical assistants and other employees as the District Board shall determine to be necessary;
- h. The right to conduct and pay for studies, plans and designs to effectuate the purpose of the District, which action may include, but is not limited to, work plans for expansion, staffing plans and financing plans;
- i. The right to enter into interlocal agreements or other contracts with public or private entities, if necessary, for the purpose of accomplishing the purposes of the District;
- j. The right to enter into contracts with public or private entities for the provision of assistance in planning, financing and constructing any and all facilities and services as determined to be appropriate and desirable by the District Board;
- k. The right to contract for appropriate engineering and financial feasibility studies;

- l. The right to maintain an office at such place or places within the territorial boundary of the District as the District Board may designate;
- m. The right to employ and compensate such personnel, consultants and technical and professional assistants as the District Board shall deem necessary to the exercise of the District powers and to the performance of the duties set forth in this Section;
- n. The right to accept and receive, utilize or expend, in furtherance of its functions, funds, grants and services from the federal government or its agencies, from departments, agencies and instrumentalities of state, municipal, county or other local governments, or from private or civic sources;
- o. The right to invest in accordance with applicable Florida law any surplus money, including such money in any sinking fund or other fund established for the purpose of providing for the payment of the principal or interest of any bonded or other indebtedness or for any other purpose;
- p. The right to levy such tax and special assessments as may be authorized; and to charge, collect, and enforce fees and other user charges; and
- q. The right to hold, control, and acquire by donation or purchase, or dispose of, any easements, dedications, platted reservations, or any reservations for those purposes authorized by this Ordinance and to make use of such easements, dedications, or reservations for any of the purposes authorized by this Ordinance.
- r. The right to hold, control and acquire by donation or purchase, or dispose of, any District property for those purposes authorized by this Ordinance and to make use of such property for any of the purposes authorized by this Ordinance.
- s. The right to have and exercise such powers as are reasonably implied in or not inconsistent with this Ordinance and which the District Board determines are necessary and proper to carry out the objectives and purposes of the District.

SECTION 4. GOVERNING BOARD OF DISTRICT. The governing body of the District, which shall be designated as the Board of Supervisors (the "District Board"), shall be appointed by the City Council of the City. Appointments to the District Board shall serve at the pleasure of the City but unless otherwise stated in the appointment, the members of the District Board shall serve for a term of three (3) years from the date of appointment. Any vacancy in the District Board shall be filled by an appointment made by the City Council of the City for the balance of the unexpired term within sixty (60) days of the occurrence of such vacancy. The District Board shall exercise the powers granted to the District. The District Board shall consist of five members. Each member shall hold office until a successor is chosen. The members of the District Board must be residents or property owners within the District. No member may serve as a representative on the Collier County Coastal Advisory Committee.

A majority of the members of the District Board shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. Action taken by the District Board shall be upon a vote of a majority of the members present unless general law or a rule of the District requires a greater number. The District Board shall keep a permanent record book in which shall be recorded minutes of all meetings, resolutions, proceedings, certificates, bonds given by all employees, and any and all corporate acts. The record book shall at reasonable times be opened to inspection in the same manner as state, county, and municipal records pursuant to Chapter 119, Florida Statutes. The record book shall be kept at the office or other regular place of business maintained by the District Board.

The District Board shall elect one Supervisor as chairman and one Supervisor as vice-chairman. The chairman shall preside at Board meetings and execute all contracts and other legal documents on behalf of the District. The chairman shall be elected for the term of one (1) year. If the chairman shall cease to be a Supervisor or shall for any reason be unable to serve as chairman, a successor shall be elected by the District Board for the unexpired portion of the term. The vice-chairman shall be elected for a term of one (1) year and shall have all of the duties of the chairman in his/her absence. If neither the chairman nor vice chairman is in attendance and willing to chair a meeting at which a quorum is present, the District Board may elect a chairman pro-tem for the duration of that meeting.

All powers, privileges and duties vested in or upon the District shall be exercised and performed by and through the District Board; provided, however, the exercise of any and all executive, administrative and ministerial powers may be delegated by the District Board to any of its officers, staff, employees, agents or designees, which delegation may be re-delegated or withdrawn by the District Board. The District Board shall fix and publish the time and place or places at which its regular meetings shall be held, and shall provide for the calling and holding of special meetings at the request of any supervisor upon appropriate notice. The District Board shall adopt rules, regulations, resolutions, and orders for conducting its business.

Supervisors shall serve without compensation, but shall be reimbursed for per diem and travel in accordance with Section 112.061 Florida Statutes or other applicable Florida law.

SECTION 5. FINANCING OF THE DISTRICT. Subject to the provisions of Section 3d. hereof, the District, in order to finance the purposes and operations of the District, shall have the power to borrow money and issue bonds, revenue anticipation notes, or certificates payable from and secured by a pledge of funds, revenues, taxes and assessments, warrants, notes, or other evidence of indebtedness; and to cooperate or contract with other persons or entities, including other governmental agencies as necessary, convenient, incidental, or proper in connection with furthering any power, duty, or purpose authorized by applicable law and to take any other action not inconsistent with applicable law.

SECTION 6. CONSISTENT WITH COMPREHENSIVE PLAN AND DISTRICT AS THE BEST ALTERNATIVE. The creation of the District is consistent with the City of Marco

Island's Comprehensive Plan and all other applicable growth management rules, regulations, ordinances, and law. The District is the most efficient and effective method by which to achieve the purposes set forth above (as opposed to private alternatives such as a homeowner's association, private partnership, neighborhood association, or public alternatives such as MSTU, MSBU, special independent district, etc.).

SECTION 7. APPLICABLE FINANCIAL DISCLOSURE, NOTICING, AND REPORTING REQUIREMENTS. The District will provide all financial disclosures required by Florida law relating to dependent special districts, including but not limited to, all financial disclosures relating to bonds, financing, ad valorem taxes, non-ad valorem special assessments, and the like. Any and all meetings of the District Board shall be noticed in a newspaper of general circulation for not less than one week prior to the meeting. Any and all notices that are required to be provided to the landowners within the District shall be provided by U.S. Mail delivery or by posting public notice in a designated area within the District, which area shall be specified by the District Board. The District will comply with all reporting requirements required by Florida law relating to dependent special districts.

SECTION 8. BUDGET AND APPROVAL THEREOF. On or before each July 15, the District Board shall prepare or have prepared under its direction a proposed budget for the ensuing fiscal year. The proposed budget shall include an estimate of all necessary expenditures of the District for the ensuing fiscal year and an estimate of income to be received by the District for such ensuing fiscal year. The budget shall be balanced; that is the total of the estimated receipts including any balances brought forward shall at least equal the estimated expenditures. No later than each August 1, such proposed budget shall be delivered to the City Manager of the City. The budget for the District shall be approved and adopted by the City Council of the City no later than the September 30 following delivery of the same to the City Manager.

SECTION 9. TAXES TO BE LEVIED

The beach renourishment and other services in this ordinance shall be provided from taxes levied only within the District. Pursuant to the authority of Section 9(b), Article VII of the Florida Constitution, the City Council is authorized to levy ad valorem taxes within the District provided such levy has been approved by majority vote of the qualified electors residing in the District voting in an election called for such purpose. Such taxes shall be levied and collected at the same time and in the same manner as provided by law for municipal ad valorem taxes. The Property Appraiser and the Tax Collector or Collier County, Florida, are specifically authorized and directed to take all necessary and desirable actions to carry out the purpose of this ordinance.

SECTION 10. INCORPORATION, CONFLICT, AND SEVERABILITY.

a. It is the intention of the City Council and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or other appropriate word.

b. Florida Statutes, all Collier County Ordinances or parts of ordinances and all Collier County Resolutions or parts of resolutions made applicable by the City Charter in conflict herewith are hereby repealed to the extent of such conflict.

c. If any word, phrase, clause, subsection, or section of this ordinance is for any reason held unconstitutional or invalid by a court of competent jurisdiction, the invalidity thereof shall not affect the validity of any remaining portions of the ordinance.

SECTION 11. EFFECTIVE DATE. This ordinance shall take effect immediately upon adoption by the Marco Island City Council at second reading.

SECTION 12. RECORDING. A certified copy of the ordinance may be filed with the Clerk of the Circuit Court of Collier County, Florida, and duly recorded among the Public Records of Collier County, Florida.

Passed in open and regular session of the City Council of the City of Marco Island, Florida, this 19th day of April 2004.

Attest:



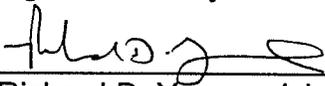
Laura Litzan
City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 

Terri DiSciullo
Council Chairwoman

Approved as to form and
legal sufficiency:



Richard D. Yovanovich, City Attorney

EXHIBIT "A"

Legal Description

The legal description of the site is as follows:

Government Lot 5 in Section 6, Township 52 South, Range 26, East; also, government lots 3, 4, and 5 in Section 7, Township 52 South, Range 26 East.

All lots are in Collier County, Florida and contain 211+ acres.

Hideaway Beach 1st Addition

Tract B and Lots 1 and 2

Tract B and Lots 1 and 2 of Block 375, Marco Beach Unit 12, according to the plat thereof as recorded in Plat Book 6, pg. 88, Public Records, Collier County, Florida, containing 1.74 acres ± and portions of R.O.W. of Kendall Drive adjacent to Lots 1 & 2 and Tract B.

Government Lots 3 and 4 Section 6 and Government Lot 4 of Section 5, all lying in Township 52 South, Range 26 East, Collier County, Florida, containing 92 acres, more or less.

A subdivision of a parcel of land lying in Government Lot 4 of Section 5, and Government Lots 3 and 4 of Section 6, all lying in Township 52 South, Range 26 East, Collier County, Florida.

A subdivision of Government Lot 5 of Section 6 and Government Lots 3, 4, and 5 of Section 7, all lying and being in Township 52 South Range 26 East, Collier County, Florida.