

ORDINANCE NO. 2023-01

AN ORDINANCE OF THE TOWN OF INDIAN SHORES, FLORIDA, CREATING A TEMPORARY JUVENILE CURFEW ORDINANCE; ENACTING PENALTIES FOR VIOLATION; INCORPORATING FINDINGS; PROVIDING FOR REPEAL OF ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCORPORATION AS AN APPENDIX TO THE CODE OF ORDINANCES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR EXPIRATION AT MIDNIGHT ON JULY 16, 2023.

WHEREAS, the Town of Indian Shores (the Town) is a Florida municipal corporation and political subdivision of the State of Florida; and

WHEREAS, substantial state and federal caselaw has been promulgated which has clarified the constitutional issues and limitations surrounding curfews in particular; and

WHEREAS, the Indian Shores Town Council (the Council) finds that a need exists to protect youth from harm and victimization, to protect the safety and well-being of the youth, and to reduce crime and violence committed by unsupervised youth; and

WHEREAS, youth are peculiarly vulnerable to being victims of crime such as homicide, robbery, assault and battery, and sexual offenses. Youth are generally smaller in stature than adults, less likely to be in possession of a weapon, and less able to defend themselves; and

WHEREAS, youth are perceived to be easier targets by those persons inclined to commit violent crimes, a vulnerability is generally increase during the late night hours because persons who are inclined to commit crimes of violence can do so with a lower risk of apprehension, because there is often little or no parental or adult supervision under the circumstances; and

WHEREAS, youth are also less likely to perceive the imminent risk of becoming the victim of a violent crime, and are under an additional threat of sex crimes because of perception that youth are less likely to be believed if they report having been the victim of a sex crime; and

WHEREAS, most parents make every reasonable effort to protect their children from the dangers of crime and make informed choices as to what to allow their children to do; and

WHEREAS, notwithstanding those efforts, parents cannot always maintain control of their children, and children at times fail to obey parentally imposed curfews and can fail to be truthful to their parents about what they are doing during the evening hours out of the home; and

WHEREAS, parental oversight of youth can also be impaired by the fact that some single parents must work during the evening or night hours, leaving their children in an unsupervised or under-supervised setting during these hours; and

WHEREAS, residents of the Town, including parents of minor children, as well as business owners and managers in the Town have asked the Town to develop a lawfully balanced means of assisting them in both reducing the risks to children who are out and unsupervised during nighttime hours, and in reducing the negative effect of unsupervised children being out at night, including vandalism, theft, public urination, underage consumption of alcohol or unlawful narcotics, and disturbance of the peace; and

WHEREAS, the Town, being a beautiful beachfront community with properties offering short term rentals , has for years seen an increase in the number of non-resident youth in the own during the Fourth of July holiday, school/university breaks, and during vacation season, resulting in numerous unsupervised youth congregating on the Town's beach, sidewalks, and business locations open during evening hours, during which times vandalism, theft, public urination, underaged consumption of alcohol or unlawful narcotics, public intoxication, fighting, disturbance of sea turtle nesting areas, and general disturbances of the peace are too often occurring; and

WHEREAS, congregation of youth in front of or within businesses during evening hours impedes the ability to customers to freely access and patronize such businesses; and

WHEREAS, the Town does not have sidewalks along Gulf Boulevard, and the congregation of youth on the shared mobility path within the Town during evening hours impedes the free flow of traffic and persons using those mobility paths for their intended purpose and

WHEREAS, the Town is situated within Pinellas County, the most densely populated county in Florida, and within easy driving distance for youth traveling from Pasco, Manatee, and Hillsborough counties; and

WHEREAS, these geographic regions include several major colleges and universities, as well as school districts with some of the highest levels of student populations, all of which release their students for extended seasonal breaks during the same weeks each year; and

WHEREAS, the Town's Chief of Police (the Chief) has reported that in prior years, his department has made many attempts to work with short-term rental properties in the Town with the goal of having those property owners/managers play a more active role in overseeing the activities of minors staying at their properties; and

WHEREAS, the Chief has reported that in spite of such efforts, the owners/managers were unwilling to crack down on short-term renting to an apparent adult online, only to have the rental occupied solely by minors, and were either unwilling or unable to exercise any meaningful control over the activities of unsupervised minors in business and on beaches and sidewalks; and

WHEREAS, the Chief reports that last year during the Fourth of July holiday, the Police Department responded to an average of 26 calls as opposed to the normal daily average of 11 calls for underage drinking, drug usage and overdoses, fighting in public, and trespassing; and

WHEREAS, The Chief has reported that the historical consistency of such activities, and the growing prevalence of vacation rental properties in the Town, the foregoing activities are projected to occur again in 2023; and

WHEREAS, the Town is a small municipality with limited resources available to combat the unruly behavior of unaccompanied juveniles which impairs the health, safety and welfare of the general public, including the minors involved; and

WHEREAS, Article VIII, § 2(b) of the State Constitution provides that municipalities shall have the governmental powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Florida Statutes § 877.25 authorizes counties and municipalities to enact curfew ordinances regulating the presence of youths in public places and establishments which provide restrictions more stringent or less stringent than the curfew established by the Legislature in Florida Statutes § 877.22 (the model curfew statute); and

WHEREAS, in *State v. J.P.*, 907 So.2d 1101, 1115-16 (Fla. 2004), the Florida Supreme Court (finding the juvenile curfew ordinances of the cities of Pinellas Park and Tampa were constitutional), ruled that strict scrutiny applies to such ordinances, that juveniles are entitled to those fundamental rights of privacy and freedom of movement, and that the ordinances burdened those rights because the ordinances did not contain sufficient exceptions to ensure minors would be allowed to exercise their rights to engage in core First Amendment activities, to engage in interstate travel, and to go to and from valid places of employment; and

WHEREAS, it is the intent of the Town to adopt this Ordinance for the protection of the general public, including minors, by establishing a limited curfew in the Town during certain hours of the day or night during certain dates of the year under certain circumstances, in a manner which will protect the fundamental rights of youth and parents by setting out a body of regulations and standards which are narrowly tailored so as to advance public interests deemed by the Council as compelling, which shall conform with requirements set out by the Florida Supreme Court in *State v. JP*, and guidelines of other State and Federal Courts, as well as meeting all requirements of the Constitutions of the United States and the State of Florida; and

WHEREAS, the Council has held public meetings on this Ordinance at which it heard from the Police Department, property owners and residents, and all other interested parties whether those parties were in support of or opposed to the regulations set forth in the Ordinance; and

WHEREAS, the Council finds that it is in the best interest of the Town, and the health, safety and welfare of its residents, visitors and businesses, to adopt this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF INDIAN SHORES:

Section 1: That all of the above recitals are true and correct, and the same are incorporated into this Ordinance as if fully set forth herein.

Section 2: That a temporary ordinance shall hereby be created to read as follows:

Sec. T-001. Definitions.

For the purposes of this chapter, the following words shall be defined as follows:

Direct route means the shortest reasonable path to travel to reach a final destination without any detour or stop along the way.

Emergency means an unforeseen combination of circumstances which results in a situation that requires immediate attention to care for or prevent serious bodily injury, loss of life, or significant property loss. The term “emergency” includes, but is not limited to, a fire, a natural disaster, or an automobile accident.

Establishment means a privately owned place of business to which the public is invited, including, but not limited to, a place of entertainment.

Guardian means:

- (1) A person who, under court order, is the guardian of a youth,
- (2) A court appointed person or agency acting in the role of a parent, or
- (3) A person who is not a parent and who has legal custody of the youth by court order.

Law enforcement officer means any sworn law enforcement officer under the direction of the police chief or sheriff.

Legal guardianship means a person to whom lawful custody has been given by a court order.

Operator means any individual, firm, association, partnership, or corporation operating, managing, or conducting any business or establishment. The term includes the members or partners of any association or partnership and the officers of a corporation.

Parent means a person who has care and control of a youth as a natural, adoptive or stepparent, and includes a person who is:

- (1) A court-appointed guardian of another person; or
- (2) A person at least 18 years of age and with written authority from a parent or court-appointed guardian to have the care and custody of another person.

Private place means any property or place, whether privately or publicly owned, to which the general public does not have access to and a right to enter or remain of business, recreation, entertainment, or otherwise.

Public place means any property owned or controlled by the Town, county, the state, or other governmental entity, to which the general public has access and a right to enter or remain for business, recreation, entertainment, or other lawful purposes.

Remain means to:

- (1) Linger or stay unnecessarily in a particular place; or
- (2) Fail to leave the premises when requested to do so by a duly authorized law enforcement officer or the owner, operator, or other person in control of the premises.

Semi-public place means any privately-owned or privately-operated real property (including any structure thereon) to which the general public has access and a right to enter or remain for business, recreation, entertainment, or other lawful purpose, and includes any common area of any condominium or housing complex, any vacant lot or vacant or abandoned buildings, and includes but is not limited to any store, shop, restaurant, tavern, theatre, parking lot, alley, road, or shopping center.

Supervising adult means a person who is at least 18 years of age and authorized to have care and control of the youth and who, by virtue of the youth's parents or guardians' authority, is responsible to watch and direct the activities of the youth while the youth is in the care and control of said person.

Swale means the low tract of land in front of or between houses or other properties often used for drainage of stormwater.

Youth means any unemancipated or unmarried person under the age of 18.

Restricted hours or Youth curfew hours mean:

10:00 p.m. until 5:00 a.m.

Sec. T-002. Establishment of youth curfew; fine.

- (a) A youth shall not be or remain, stay, linger, congregate, move about, wander, or stroll in any public place, semi-public place, or establishment in the town, either on foot or in or upon any vehicle, during curfew hours.
- (b) A youth who violates this section shall receive a written warning for her or his first violation. A youth who violates this section after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$250 for the first violation and \$500 for each and every subsequent violation.
- (c) For purposes of this section, a second or subsequent violation after warning can occur on the same day and during the same restricted hours period, and it is no defense to the issuance of a second or subsequent violation that the initial warning was issued earlier during the same day and during the same restricted hours period.
- (d) Violation of this section and §T-003 are distinct offenses committed by different individuals and the issuance of a citation to a parent or supervising adult for violation of §T-003 does not preclude issuance of a citation to a youth under this subsection.

Sec. T-003. Legal duty of parent; fine.

- (a) The parent(s) and any supervising adult(s) of a youth have a legal duty and responsibility to ensure that the youth does not violate §T-002 of this code.
- (b) The parent(s) and any supervising adult(s) have a legal duty and responsibility to personally to supervise (or arrange for a supervising adult to supervise) the youth so that the youth does not violate §T-002 of this code.
- (c) The parent(s) and any supervising adult(s) of a youth who knowingly permit the youth to violate §T-002 shall receive a written warning for the first violation. A parent or supervising adult who knowingly permits the youth to violate §T-002 after having received a prior written warning is guilty of a civil infraction and shall pay a fine of \$250 for the first infraction and a fine of \$500 for each subsequent violation.
- (d) As an alternative to paying the fine for the civil infraction, the parent(s) or supervising adult(s) who violate this section may choose to perform community service as approved by the town council or town administrator. Each hour of such service shall be applied at the rate of the state minimum wage toward the payment of the civil fine.
- (e) For purposes of this section, a second or subsequent violation after warning can occur on the same day and during the same restricted hours period, and it is no defense to the issuance of a second or subsequent violation that the initial warning was issued earlier during the same day and during the same restricted hours period.
- (f) Violation of this section and §T-003 are distinct offenses committed by different individuals and the issuance of a citation to a parent or supervising adult for violation of §T-003 does not preclude issuance of a citation to a youth under this subsection.

Sec.T-004. Legal duty of an operator; fine.

- (a) It shall be unlawful for any operator of a business to knowingly permit a youth to remain, linger, stay, congregate, move about, wander or stroll upon premises of the business during youth curfew hours.
- (b) Operators are encouraged, but not required, to post in a prominent location in their business premises the following notice in no smaller than 30-point font:
"PURSUANT TO TOWN CODE §T-002, IT IS UNLAWFUL FOR ANY UNEMANCIPATED PERSONS LESS THAN 18 YEARS OF AGE TO REMAIN ON THESE PREMISES DURING THE YOUTH CURFEW HOURS BEGINNING AT 10:00 P.M. AS SET FORTH IN TOWN CODE §T-001, UNLESS SPECIFICALLY ALLOWED BY TOWN CODE §T-005."
- (c) A business in violation of this section, after having received a prior written warning, is guilty of a civil infraction and shall pay a fine of \$250 for the first infraction and a fine of \$500 for each subsequent violation.
- (d) It shall constitute a defense if the operator notified a law enforcement officer that the youth was present on the premises of the business during the restricted hours and the youth refused to leave the premises after being requested by the operator to leave.
- (e) It shall also constitute a defense if the operator had posted notice in the form set forth in subsection (b) above and had also notified the youth that the youth was not permitted to the premises during the restricted hours.

Sec.T-005. Exceptions to curfew application.

The youth curfew provided for in §T-002 does not apply to a youth who is:

- (a) Accompanied by a parent or guardian; or
- (b) Accompanied by a supervising adult, provided that the law enforcement officer is able to verify the authorization of the supervising adult through in-person or telephonic contact with the parent or guardian; or
- (c) Married or had been married or emancipated in accordance with state law; or
- (d) Homeless or uses a public place as their usual place of abode; or
- (e) Engaged in interstate travel or bona fide intrastate travel with a parent or with the consent of the youth's parent, which may be verified by the law enforcement officer in-person or telephonically; or
- (f) On an errand at the direction of and with authorization of the youth's parent or supervising adult, using a direct route without detour, provided that the law enforcement officer is able to verify the authorized errand through in-person or telephonic contact with the parent or supervising adult; or

- (g) Attending or traveling to or from, using a direct route an activity that involves the exercise of rights protected under the First Amendment of the United States Constitution (or those similar rights protected by Article 1, Section 3,4, and 5 of the Florida Constitution), such as the free exercise of religion, freedom of speech, and the right of assembly; or
- (h) When the town council presents, or authorizes a third party to present, a special event which occurs during youth curfew hours. Any such events, if they are to occur during youth curfew hours, shall include such safety and security measures as will reasonably protect any youth participating in the event and prevent any youth present during the event from engaging in unlawful activities; or
- (i) Engaged in lawful employment or traveling to or from, by direct route, lawful employment, or who is in a public place or establishment in connection with or as required by a business, trade, profession, or occupation in which the youth is lawfully engaged, provided that the law enforcement officer may verify employment through in-person or telephonic contact with the employer, parent, or supervising adult; or
- (j) Reacting or responding to an emergency that requires the youth's immediate attention as defined in §T-001 and provided that the law enforcement officer may verify such necessity through in-person or telephonic contact with the parent or supervising adult, or through the officer's own observations and judgment; or
- (k) Attending or traveling to or from, by direct route, an official school, religious, or recreational activity that is supervised by adults and is sponsored by governmental entity, civic or religious organization, or similar entity, that accepts responsibility for the youth as an invitee, provided the law enforcement officer may verify these factors through in-person or telephonic contact with the parent, supervising adult, or representative of the entity or organization that the activity is so sponsored and the entity or organization does accept responsibility for the youth; or
- (l) On the property of, or on the swale or sidewalk abutting the place where the youth resides, or is on the abutting property of, swale or sidewalk of the residential property of an adult next-door neighbor, provided the neighbor confirms to the law enforcement officer that she or he consents and did not complain to law enforcement or code enforcement officers about the youth's presence.

Sec.T-006. Enforcement procedures.

- (a) A law enforcement officer is authorized to stop persons whom the officer reasonably suspects are in violation of the curfew provisions of this chapter and detain such persons as long as it is necessary to determine whether they are in violation of this chapter.
- (b) Before taking any enforcement action under this chapter, the law enforcement officer shall ask the youth and any person(s) with the youth who claims to be a parent or

supervising adult, the youth's age and reason for being in a public place. The Officer shall not issue a citation or notice of violation unless the officer reasonably believes that a violation of this has occurred and that based on any response and other facts and circumstances observed by or brought to the attention of the officer, no defense is present.

(c) If a youth is in violation of §T-002, the law enforcement agent may:

- a. Ascertain the name and address of the youth; and
- b. Issue a written warning to the youth that he or she is in violation of the curfew; and
- c. Order the youth to leave the restricted area for the remainder of the restricted hours; or
- d. Contact the youth's parent or guardian and allow the youth's parent or guardian to take physical custody of the youth.

(d) The law enforcement officer may take the youth into protective custody if:

- a. The law enforcement officer has reasonable grounds to believe that the youth has been abandoned or neglected, or is in immediate danger from her or his surroundings and that removal is necessary for her or his protection, or
- b. There is no parent or supervising adult having lawful custody and control over the youth at the youth's home or usual place of abode, or
- c. The law enforcement officer is unable to make contact with the parent or documented supervising adult of the youth within a reasonable time in order to allow the parent or documented supervising adult to pick up the youth, or
- d. The parent or supervising adult refuses to pick up or take custody of the youth.

(e) Following three or more violations of §T-002 by the youth, the police chief or a designated representative may contact the appropriate state or county child welfare agency and recommend an investigation of the youth's home as provided for by law.

(f) When a youth is taken into custody under subsection (d) above, and the law enforcement office is unable to contact a parent of the youth within 2 hours after the youth is taken into custody, the youth may be transported to a holding location or other facility as provided for by part IV of the Florida Statutes Chapter 39, or to her or her residence.

Section 3: That all Ordinances or parts of Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: That if any provision or part of this Ordinance is declared invalid or unenforceable as a matter of law, the offending portion shall be stricken and all other provision hereof shall remain valid and enforceable.

Section 5: The provision of this Ordinance shall be incorporated as an appendix to the Code of Ordinances of the Town of Indian Shores, Florida, as an addition or amendment thereto.

Section 6: This Ordinance shall become effective immediately upon adoption in the manner provided by law, and shall automatically expire at midnight on July 16, 2023, unless otherwise extended by the Town Council.

FIRST READING this 11th day of April, 2023.

The first reading of the above Ordinance, upon motion by Councilor Bill Smith and seconded by Vice Mayor Diantha Schear as duly approved at a regular Council Meeting held on the 11th day of April, 2023.

Voting in favor of the First Reading: **Mayor Patrick C. Soranno, Vice Mayor Diantha Schear, Councilor Ellen A. Bauer, and Councilor Bill Smith**

Voting in opposition: **Councilor Mike Petruccelli** Absent: **None** Abstaining: **None**

SECOND READING AND FINAL PASSAGE this 9th day of May, 2023.

The second reading of the above Ordinance, upon motion by Vice Mayor Diantha Schear and seconded by Councilor Ellen Bauer as duly approved at a Regular Town Council Meeting held on the 9th day of May, 2023.

Voting in favor of the Second Reading: **Mayor Patrick C. Soranno, Vice Mayor Diantha Schear, Councilor Ellen Bauer, Councilor Mike Petruccelli, Councilor Bill Smith**

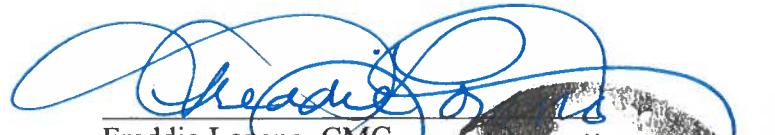
Voting in opposition: **None** Absent: **None** Abstaining: **None**

PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF INDIAN SHORES, FLORIDA, THIS 9th day of May, 2023.

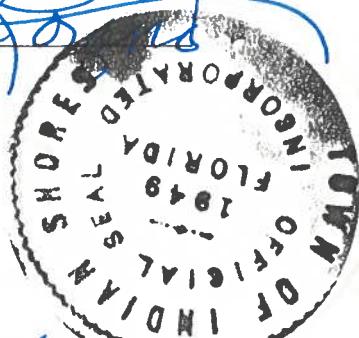
ATTEST:



Patrick C. Soranno
Mayor



Freddie Lozano, CMC
Town Clerk



The seal is circular with the text "TOWN OF INDIAN SHORES, FLORIDA" around the perimeter. In the center, it says "SEAL" and "1948".

Approved as to form:



Regina A. Kardash, Esq.
Town Attorney