

44 problems and has been linked to cancer and other fatal diseases; and

45
46 WHEREAS, the staff analysis published for the Florida Clean Indoor Act legislative
47 amendments in House Bill 105 references various studies from the United Health
48 Foundation, America's Health Rankings, the Centers for Diseases Control and
49 Prevention, and others on the impact smoking has on the health of citizens; and

50
51 WHEREAS, the reports referenced in the staff analysis for the Florida Clean
52 Indoor Act legislative amendments in House Bill 105 further states that secondhand
53 smoke is generally defined as smoke from burning tobacco products or smoke that is
54 exhaled by a tobacco smoker; and

55
56 WHEREAS, exposure to secondhand smoke can cause numerous health
57 problems and has been causally linked to cancer and other fatal diseases; and

58
59 WHEREAS, in 2021, an estimated 15.5 percent of the adults in Florida were
60 tobacco smokers. See United Health Foundation, America's Health Rankings, Annual
61 Report, [https://www.americashealthrankings.org/explore/annual/measure/Smoking/](https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL)
62 [state/FL](https://www.americashealthrankings.org/explore/annual/measure/Smoking/state/FL) (last visited Feb. 11, 2022); U.S. Department of Health and Human Services,
63 The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon
64 General, 148 (2014), [https://www.surgeongeneral.gov/library/reports/50-years-of-](https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf)
65 [progress/full-report.pdf](https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf)(last visited Feb. 11, 2022); and

66
67 WHEREAS, Tobacco smoke contains over 7,000 chemicals, including hundreds
68 that are toxic and up to 69 that are known to cause cancer. *Id.*; and

69
70 WHEREAS, more than 480,000 deaths annually in the United States are caused
71 by cigarette smoking, with exposure to secondhand smoke causing an estimated 41,000
72 deaths each year. See Centers for Disease Control and Prevention, Tobacco-Related
73 Mortality, [https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm)
74 [tobacco_related_mortality/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm) (last visited Feb. 11, 2022); and

75
76 WHEREAS, exposure to secondhand smoke can cause numerous health
77 problems and has been causally linked to cancer and other fatal diseases. See U.S.
78 Centers for Disease Control and Prevention, Secondhand Smoke (SHS) Facts,
79 [https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_f](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm)
80 [acts/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/secondhand_smoke/general_facts/index.htm) (last visited Feb. 11, 2022); and

81
82 WHEREAS, studies suggest that secondhand smoke in crowded outdoor areas
83 can cause concentrations of air contaminants comparable to those caused by indoor
84 smoking. Nipapun Kungskulniti et al., Secondhand Smoke Point-Source Exposures
85 Assessed By Particulate Matter At Two Popular Public Beaches in Thailand, 40 J. Public
86 Health 3, 527–532 (2017), <https://academic.oup.com/jpubhealth/>

87 article/40/3/527/4110319?guestAccessKey=5947c328-fd75-4b6c-acfe-28f989c4c639
88 (last visited Feb. 11, 2022); James Repace, Benefits of Smoke-free Regulations in
89 Outdoor Settings: Beaches, Golf Courses, Parks, Patios and in Motor Vehicles, 34 WM
90 Mitchell L. Rev. 1621, 1622-1624, 1638 (2008),
91 <https://open.mitchellhamline.edu/wmlr/vol34/iss4/15/> (last visited Feb. 11, 2022); and
92

93 WHEREAS, the U.S. Center for Disease Control states that secondhand smoke is
94 generally defined as smoke from burning tobacco products or smoke that is exhaled by
95 a tobacco smoker; and
96

97 WHEREAS, the current law prohibits cities and counties from establishing
98 reasonable smoke-free zones or designated smoking areas so that our young people can
99 enjoy playing on playgrounds, at recreation facilities, or athletic fields or watching their
100 siblings play without encountering dangerous secondhand smoke; and
101

102 WHEREAS, the Florida Clean Indoor Act legislative amendments were filed and
103 adopted in the 2022 Session of the Florida Legislature and allow municipalities and
104 counties to protect the youth of their community through the designation of smoke-free
105 zones or designated smoking areas; and
106

107 WHEREAS, once tobacco smokers at a public beach or in a public park finish
108 smoking, the Town Council finds that smokers simply throw the remaining tobacco
109 product on the ground causing litter and damaging public aesthetics; and
110

111 WHEREAS, the Town Council has determined that it is in the public interest to
112 restrict smoking on the beach and in public parks as permitted by the Florida Clean Air
113 Act; and
114

115 WHEREAS, the Town Council finds that this Ordinance is in promotion of the
116 public health and safety of the Town by providing for prohibiting the use of certain
117 tobacco products causing secondhand smoke on public beaches and in public parks; and
118

119 WHEREAS, the Town Council finds that this Ordinance is in promotion of the
120 public aesthetics of the Town by reducing the opportunity for the disposal of tobacco
121 products on public beaches and in public parks.
122

123 NOW, THEREFORE, BE IT ENACTED BY THE TOWN OF INDIALANTIC, FLORIDA:
124

125 SECTION 1. Recitals. Each and all of the recitals ("WHEREAS" clauses)
126 are hereby incorporated herein.
127

128 SECTION 2. That the Code of Ordinances of Indialantic, Florida, is
129 hereby amended by adding a section, to be numbered 8-8, which said section reads as

130 follows:

131
132 **Sec. 8-8. Smoking restricted in parks and the ocean beach.**
133

134 Smoking in town or county owned public parks is prohibited as provided in section 26-71
135 and subject to the penalties as set forth in section 26-73 of this code.
136

137 SECTION 3. That the Code of Ordinances of Indialantic, Florida, is
138 hereby amended by adding a section, to be numbered 8-91, which said section reads
139 as follows:

140
141 **Sec. 8-91. Smoking restricted at the ocean beach.**
142

143 Smoking at the ocean beach is prohibited as provided in section 26-71 and subject to the
144 penalties as set forth in section 26-73 of this code.
145

146 SECTION 4. That section 26-70 of the Code of Ordinances of Indialantic,
147 Florida, is hereby amended to read as follows:

148
149 **Sec. 26-70. - Definitions.**
150

151 The following words, terms, and phrases, when used in this article, shall have the
152 meanings ascribed to them in this section, except where the context clearly indicates
153 a different:

154
155 *Dump* means to dump, throw, discard, place, deposit, or dispose of.
156 * * *

157 *Litter* means any garbage; rubbish; trash; refuse; can; bottle; box; container; paper;
158 disposable package; scrap metal; tobacco product; tire; appliance; mechanical
159 equipment or part; building or construction material; tool; machinery; wood; motor
160 vehicle or motor vehicle part; vessel; aircraft; farm machinery or equipment; sludge
161 from a waste treatment facility, water supply treatment plant, or air pollution control
162 facility; or substance in any form resulting from domestic, industrial, commercial,
163 mining, agricultural, or governmental operations. Consistent with F.S. § 790.33,
164 ammunition and firearms shall not be included in this definition.
165

166 *Litter enforcement officer* means any officer of the Florida Highway Patrol, a county
167 sheriff's department, a town law enforcement officer, a town code enforcement officer
168 certified by the town police chief as having been trained in the issuance of citations
169 pursuant to this article, or a law enforcement officer of the Department of Environmental
170 Protection or the Fish and Wildlife Conservation Commission.
171

172 *Litter receptacle* means any container constructed and placed for public use as a
173 depository for litter.

174
175 *Motor vehicle* means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor,
176 or semitrailer combination or any other vehicle that is powered by a motor.

177 * * *
178 *Private property* means property owned by any person (other than public property),
179 including but not limited to yards, grounds, driveways, entrances or passageways,
180 parking areas, any body of water, vacant land, or private recreational facility.

181
182 *Public property* means any area that is used or held out for use by the public whether
183 owned or operated by public or private interests, including but not limited to highways,
184 streets, alleys, beaches, parks, recreational areas, parking lots, sidewalks, medians,
185 causeways, or bodies of water.

186
187 *Smoking* means inhaling, exhaling, burning, carrying, or possessing any lighted tobacco
188 *product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.*
189 *See F.S. §386.203 (2022).*

190
191 *Tobacco product* means loose tobacco suitable for smoking; cigar; cigarette; snuff; snuff
192 *flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts;*
193 *refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms*
194 *of tobacco prepared in such manner as to be suitable for chewing. cf. generally F.S. §§*
195 *210.25(12) and 569.02(8) (2022).*

196
197 SECTION 5. That section 26-71 of the Code of Ordinances of Indialantic,
198 Florida, is hereby amended to read as follows:

199
200 **Sec. 26-71. - Unlawful acts.**

201
202 (a) *Acts prohibited.* It is unlawful for any person to dump litter as herein
203 defined in any manner or amount:

204
205 (1) In or on any public highway, road, street, alley or thoroughfare,
206 including any portion of the right-of-way thereof, or any other public lands, including but
207 not limited to any town or county owned public park or publicly owned beach, except in
208 litter receptacles. When any litter is thrown or discarded from a motor vehicle, the
209 owner, where knowledge is shown, or the operator of the motor vehicle, or both, shall
210 be deemed in violation of this article.

211
212 (2) In or on any river, stream, tidal, or coastal water of the state or other
213 body of water within the town. When any litter is thrown or discarded from a boat, the

214 owner, where knowledge is shown, or the operator of the boat, or both, shall be deemed
215 in violation of this article.

216
217 (3) In or on any private property, unless prior consent of the owner of
218 said private property has been given and unless the dumping of such litter by such
219 person will not cause a public nuisance or otherwise be in violation of any other state
220 or local law, rule, or regulation.

221 * * *
222 (c) Smoking.

223
224 (1) It is unlawful for any person to smoke a tobacco product within the
225 boundaries of any public beach or "ocean beach" as defined in section 8-75 of the town
226 code, or public park owned by the town or the county; provided, that pursuant to F.S.
227 § 386.209, F.S., this provision shall not apply to the smoking of unfiltered cigars.
228 Accord sections 8-8 and 8-91 of the town code. This provision shall not apply to Nance
229 Sea Turtle Park or Sunrise Park, which are state owned lands.

230
231 (2) The town manager, or said manager's designee, must
232 conspicuously post, or cause to be posted, signs stating that smoking of tobacco
233 products (except as provided by state law unfiltered cigars) is prohibited on the ocean
234 beach, or county or town owned public park, as applicable. Each sign posted pursuant to
235 this paragraph must have letters of reasonable size which can be easily read.

236
237 SECTION 6. That section 26-73(a) and (e) of the Code of Ordinances of
238 Indialantic, Florida, is hereby amended to read as follows:
239

240 **Sec. 26-73. - Enforcement.**

241
242 (a) *Citations generally.*

243
244 (1) Any litter enforcement officer may issue a citation to any person
245 violating the requirements of section 8-37 (Garbage disposal), section 26-39 (Placing
246 on land of another), section 26-40 (Construction or landscaping debris on streets,
247 vacant lots), section 26-71 (unlawful acts; smoking and litter control), or F.S. § 403.413,
248 the Florida Litter Law, as amended from time to time.

249
250 (2) A violator may pay the fine as provided in subsection (e) of this
251 section and waive his right to a hearing and enforcement by a county court judge.

252 * * *
253 (e) *Penalties.*

254 (1) Penalties imposed for the violation of sections 8-37, 26-39, 26-40,
255 or section 26-71 of this town code, shall be:
256

257 a. One hundred dollars for a first offense, if paid to the finance
258 director of the town within ten days of issuance of the citation.

259
260 b. Three ~~Two~~ hundred dollars for a second or subsequent
261 offense if paid to the finance director of the town more than ten days but within 20 days
262 of issuance of the citation.

263
264 As used herein, payment of the above set forth fine means that payment in U.S. dollars
265 by valid credit card, certified bank cashier's check, or in cash, has been remitted and
266 received by the town finance director within twenty days of issuance of the citation the
267 timeframe set forth above. For individuals wishing to pay by credit card, the credit card
268 holder will be responsible for all credit card company transaction fees.

269
270 (2) If the fine outlined in subsection (e)(1) is not paid within the 20 day
271 period outlined therein, the clerk shall cause the violator listed on the citation to be
272 served with a court summons requiring payment or attendance at a hearing at a time
273 and place specified on such summons in accordance with Florida Rules of Criminal
274 Procedure. A county judge, after a hearing, shall make a determination as to whether
275 a littering violation has been committed and may impose a penalty as permitted by F.S.
276 §§ 162.21 and 386.208, which is a fine as set forth above of not less than ~~\$300.00~~, nor
277 more than ~~\$500.00~~, plus applicable and legally imposed court costs.

278
279 (3) Nonpayment of the penalty, as defined above, within such 20 day
280 period shall be prima facie ~~prima facie~~ evidence of the violator's election to waive the
281 right to pay the fine imposed in subsection (e)(1)a. or b.

282 * * *
283
284 SECTION 7. Sections 8-8, 8-91, and 26-71(c)(1) of this code shall not be
285 enforceable until the signage referenced in Section 26-71(c)(2) has been posted by the
286 Town.

287
288 SECTION 8. Severability Clause/Interpretation.

289
290 (a) In the event that any term, provision, clause, sentence or section of
291 this Ordinance shall be held by a court of competent jurisdiction to be partially or wholly
292 unenforceable or invalid for any reason whatsoever, any such invalidity, illegality, or
293 unenforceability shall not affect any of the other or remaining terms, provisions, clauses,
294 sentences, or sections of this Ordinance, and this Ordinance shall be read and/or applied
295 as if the invalid, illegal, or unenforceable term, provision, clause, sentence, or section did
296 not exist.

297
298 (b) That in interpreting this Ordinance, underlined words indicate
299 additions to existing text, and stricken through words include deletions from existing text.

300 Asterisks (***) indicate a deletion from the Ordinance of text, which exists in the Code
301 of Ordinances. It is intended that the text in the Code of Ordinances denoted by the
302 asterisks and not set forth in this Ordinance shall remain unchanged from the language
303 existing prior to adoption of this Ordinance.
304

305 (c) Section 7. of this Ordinance shall not be codified.
306

307 SECTION 9. Effective Date. This Ordinance shall become effective upon
308 adoption.
309

310 PASSED by the Town Council of the Town of Indialantic on first reading on the
311 7th day of September, 2022, and ADOPTED by the Town Council of the Town of
312 Indialantic, Florida on final reading on the 12th day of October, 2022.
313

314
315 TOWN OF INDIALANTIC
316
317
318
319
320



David Berkman
Mayor

321
322 ATTEST: 
323 Rebekah Raddon
324 Town Clerk