

**ORDINANCE NO. 2018-03**

**AN ORDINANCE OF THE CITY OF INDIAN ROCKS BEACH, FLORIDA, CREATING A NEW § 74-66 OF THE CITY CODE TO CONFIRM THE PUBLIC'S LONG-STANDING CUSTOMARY USE OF THE DRY SAND AREAS OF THE CITY'S BEACHES, CLARIFYING WHICH USES ARE PERMITTED AND PROHIBITED FOR MEMBERS OF THE PUBLIC ON THE DRY SAND AREAS OF THE BEACH THAT ARE OWNED BY PRIVATE PARTIES; PROVIDING FOR A BUFFER AREA AROUND PRIVATE PERMANENT STRUCTURES; PROVIDING FOR ENFORCEMENT; MAKING RELATED FINDINGS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.**

**WHEREAS**, after the United States acquired Florida from Spain in the early 1800's, the lands under the navigable waters, including the shores, were held by the United States for the benefit of the people; and

**WHEREAS**, when Florida gained statehood, it was granted authority to hold, in its sovereign capacity, title to the beds of navigable waters, including the shore and the space between high and low water marks, in trust for the people of the state, who have rights of navigation, commerce, fishing, boating and other public uses; and

**WHEREAS**, the City of Indian Rocks Beach (the City) was incorporated as a Florida municipality in 1965; and

**WHEREAS**, the City lies on a barrier island between the Gulf of Mexico and the Intracoastal Waterway; and

**WHEREAS**, the City has a total area of 1.4 square miles, of which 0.9 square miles is land and 0.5 square miles (33.09%) is water; and

**WHEREAS**, tourism is its primary industry; and

**WHEREAS**, pioneer settler Harvey K. Hendrick, who arrived in Indian Rocks Beach around 1890, would remark years later, "I liked the place, I thought it was the most beautiful place on God's green footstool, and I think so yet."; and

**WHEREAS**, throughout its history, Indian Rocks has been considered a special place by those fortunate to discover it, as far back as the 1500s, when visiting Tocobaga Indians found healing springs along with an abundance of sustaining fish and wildlife; and

**WHEREAS**, pioneer families came to settle the Indian Rocks area on the mainland beginning in the mid-1800s, attracted by an abundant supply of fresh water, which the natural springs provided, a soil and climate suitable to agriculture, and the bountiful fishing opportunities offered by the Gulf of Mexico and bay waters; and

**WHEREAS**, in 1883, four men sailed southward from Cedar Key, exploring the gulf coast in search of the ideal spot to settle and arrived in the Narrows where the old bridge was eventually built, proclaiming, "This is it."; and

**WHEREAS**, of the party, J. H. Hendrick and L. W. Hamlin would homestead their chosen place, now known as Indian Rocks Beach; and

**WHEREAS**, the barrier island became "Tampa's playground" when the Tampa & Gulf Coast Railroad built a spur from the big city to the beach in 1914, allowing Tampa residents to flock to their newly discovered paradise, seeking relief from the summer heat and the pressures of boom era city life. The shoreline retreats they built, ranging from cottages to grand beach homes, offered a slice of heaven to the vacationers.

**WHEREAS**, following World War II, a new generation of ex-G.I.'s and their baby boom families discovered the wonders of Indian Rocks Beach with the 1950s and '60s seeing the creation of the longest fishing pier in Florida, and the creation of Tiki Gardens, a multi-acre Polynesian paradise which drew 300,000 visitors a year during its prime years; and

**WHEREAS**, a cooperative community spirit gave Indian Rocks Beach an enduring cohesiveness that is so attractive to residents even today, with churches, civic organizations, social groups, and government entities combining to sponsor events and offer activities and services that brought residents and visitors into community with the city and each other; and

**WHEREAS**, new winter residents, the snowbirds, arrived in the 1970s, filling the condominiums along the shore, their presence bolstering the local economy, and bringing an influx of new ideas and tastes from around the country and the world; and

**WHEREAS**, a diverse, colorful blend of people from all age groups, and places old and new, gives Indian Rocks Beach its unique, eclectic "cottage" character, a mix that residents prize and visitors seek out year after year; and

**WHEREAS**, historical records, photographic evidence and testimony of citizens of the City, confirm the public at large, including City and county residents and visitors to the City, have utilized the dry sand areas of all of the beaches in the City for recreational purposes since well before 1970 and indeed since time immemorial; and

**WHEREAS**, Article X, § 11 of the Florida Constitution provides that the state holds the land seaward of the mean high-water line in trust for the people, and the public has a right of access along Florida's beaches and shorelines below the mean high-water line; and

**WHEREAS**, Florida Statutes §187.201(8)(b)(2) requires the state to ensure "the public's right to reasonable access to beaches"; and

**WHEREAS**, per Florida Statutes § 161.011 (Beach and Shore Preservation Act), when public money funds beach expansion, new sand becomes state property, free for public use; and

**WHEREAS**, § 10.7 of the City Charter provides that no real property interest held by the City which provides public beach access shall be sold, traded, given away, vacated or alienated in any way except after referendum approval of electorate; and

**WHEREAS**, § 74-64 of the City Code provides that the City seeks to preserve and protect the beauty of its beaches for use by residents and tourists; and

**WHEREAS**, § 74-65 of the City Code finds that the City has a significant tourist and county resident day use visitor population that utilizes its beaches, and that the City is a largely recreational and tourist community with its beaches being a very valuable asset; and

**WHEREAS**, the City has long sought to safeguard the customary use of its beaches at the local law level, having adopted: § 74-61 (prohibiting fires, possession or consumption of alcohol, possession or use of glass or bottles, live music, parties or unpermitted special events on the beaches); § 74-62 (prohibiting persons from bringing animals onto the beaches); § 74-65 (prohibiting leaving tents, canopies or volleyball nets on beach overnight); § 74-82 (regulating concessions on public beach); and § 18-177 (prohibiting soliciting or canvassing on the City's public beach), all aimed at affording a balance of acceptable use between owners of private properties along the beaches and beach visitors and all in effect prior to January 1, 2016; and

**WHEREAS**, even when the City has elected to vacate rights of way it historically held on beach properties, such as in Resolutions 82-08, 83-06 and 85-10, it has expressly afforded protections for members of the public to use the beaches by insertion of reverter clauses should a given property owner attempt to deny such members of the public the historical use of the beaches; and

**WHEREAS**, Chapter Law 2018-94 created Florida Statutes § 163.035, creating a framework for local governmental establishment of recreational customary use ordinances; and

**WHEREAS**, this new law creates significant new and costly procedural requirements for the adoption of any new customary use ordinances after July 1<sup>st</sup> 2018; and

**WHEREAS**, this new law is not applicable to ordinances in existence prior to January 1<sup>st</sup> 2016 and allows local governments to raise customary use as an affirmative defense in proceedings challenging any beach regulation ordinance adopted prior to July 1<sup>st</sup> 2018; and

**WHEREAS**, the recreational use of the dry sand areas of all of the beaches in the City is a treasured asset of the City which is utilized by the public at large, including residents and visitors to the City; and

**WHEREAS**, the use of the dry sand areas of all of the beaches in the City are a vital economic asset to the City, Pinellas County, and the State of Florida; and

**WHEREAS**, the use of the dry sand areas of the City's beaches has been ancient, exercised without interruption, peaceable and free from dispute, reasonable, certain, obligatory, and consistent with other customs or other law; and

**WHEREAS**, the Florida Supreme Court, in *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 75 (Fla. 1974), expressly recognized the doctrine of customary use in the state of Florida; and

**WHEREAS**, the federal district court for the Northern District of Florida, in *Alford v. Walton County*, 2017 WL 8785115, (N.D. Fla. November 22, 2017), the most recent case to consider a Florida local government's authority to maintain customary use ordinances, confirmed that such ordinances were within the right of local governments to adopt and maintain; and

**WHEREAS**, in light of this long and continuous use, the City's Commissioners find that the doctrine of customary use has applied to all of the beaches in the City since even before the City's founding; and

**WHEREAS**, the City desires to ensure that the public's long-standing customary use of the dry sand areas of all of the beaches in the City for recreational purposes is protected; and

**WHEREAS**, the City recognizes, acknowledges, and protects the rights of private property owners to enjoy and utilize their property; and

**WHEREAS**, the buffer zone set forth in this Ordinance is not intended to constitute an abandonment of the public's right, based upon its long-standing customary use, to utilize the dry sand areas of the City's beaches for recreational purposes in such buffer zone, but rather is provided voluntarily and solely as an accommodation to the private property rights of those individuals who own property on which a portion of the dry sand areas of the beach is located; and

**WHEREAS**, the owners of property that contains a portion of the dry sand areas of the City's beaches may, under the City's pre-existing customary use rules and under this Ordinance, still make any use of their property which is consistent with such customary public uses and not calculated to interfere with such uses; and

**WHEREAS**, while the City's Commission finds that its current ordinances provide an effective protection of the customary use of the City's beaches by residents, tourists and visitors, it also finds that it is in the best interests of those persons and of the City, to further bolster and clarify this pre-existing customary use by the adoption of this Ordinance.

**NOW, THEREFORE BE IT ORDAINED** by the City Commission of the City of Indian Rocks Beach, Florida, that:

**Section 1.** Division 1 (Generally) of Article III (Beaches) of Chapter 74 (Waterways) of the Indian Rocks Beach City Code, is hereby amended by creating the following new § 74-66 as follows:

ARTICLE III. – BEACHES

DIVISION 1. – GENERALLY

**Sec. 74-66. – Customary use of dry sand beach.**

(a) The public’s long-standing customary use of the dry sand areas of all of the beaches in the city for recreational purposes is hereby recognized and protected. Except as stated in subsection (c) below, no individual, group, or entity shall impede or interfere with the right of the public at large, including the residents of and visitors to the city, to utilize the dry sand areas of the beach that are owned by private entities for the uses as described in subsection (d).

(b) The dry sand area of the beach is defined as the zone of unconsolidated material that extends landward from the mean high-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves, whichever is more seaward.

(c) Members of the public at large shall not utilize a fifteen (15) foot buffer zone located seaward from the toe of the dune or from any privately-owned permanent habitable structure that is located on, or adjacent to, the dry sand areas of the beach, whichever is more seaward, except as is necessary to utilize an existing or future public beach access point for ingress and egress to the beach. The foregoing buffer zone requirement shall not apply to emergency service workers, including police, fire and paramedic personnel, nor to other governmental personnel exercising lawful duties, nor to persons invited or authorized to be within the zone by the private land owner.

(d) Unless authorized by a concession approved pursuant to division 2 of this article, the following are the sole uses permitted for members of the public on the dry sand areas of the beach that are owned by private entities:

(1) traversing the beach;

(2) sitting, standing or laying on the sand, in a beach chair, or on a beach towel or blanket;

(3) using a beach umbrella, canopy, sun shelter or other device to provide shade;

(4) sunbathing;

(5) picnicking;

(6) fishing;

(7) swimming or surfing off the beach;

(8) placement of surfing or fishing equipment for personal use; and

(9) building sand creations unless prohibited by applicable sea turtle codes or laws.

(e) Activities on the beach are governed by article III of this chapter 74, and such other regulations as are now or may in the future be included in that article or this code. This article shall be enforced as provided by § 2-272 et seq. of this code.

**Section 2.** For purposes of codification of any existing section of the Indian Rocks Beach Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

**Section 3.** If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the City Commission would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

**Section 4.** The Codifier shall codify the substantive amendments to the Indian Rocks Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

**Section 5.** This ordinance shall take effect immediately upon its final passage.

**ADOPTED ON FIRST READING** on the 12<sup>th</sup> day of June 2018, by the City Commission of the City of Indian Rocks Beach, Florida.

**PUBLISHED** the 16<sup>th</sup> day of June 2018, in the Tampa Bay Times.

**ADOPTED ON SECOND AND FINAL READING** on the 28<sup>th</sup> day of June 2018, by the City Commission of the City of Indian Rocks Beach, Florida.

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Joanne "Cookie" Kennedy, Mayor-  
Commissioner

**Attest:**

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Deanne Bulino O'Reilly, City Clerk

**Approved as to form:**

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Randy Mora, City Attorney