

1
2 ALACHUA COUNTY
3 BOARD OF COUNTY COMMISSIONERS

4 **ORDINANCE NO. 2020-__**

5
6 AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
7 OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 27 OF
8 THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED
9 “EMERGENCIES”; PROVIDING FOR REPEALING CLAUSE,
10 PROVIDING FOR MODIFICATION AT PUBLIC HEARING,
11 PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION
12 IN THE CODE, AND PROVIDING AN EFFECTIVE DATE.

13
14 **WHEREAS**, as of August 24, 2020, Alachua County has entered week 23 of this
15 COVID-19 declaration of emergency;

16 **WHEREAS**, prior to this emergency event, local declared emergencies in Alachua
17 County rarely lasted longer than a few weeks;

18 **WHEREAS**, Chapter 27, Alachua County Code of Ordinances, entitled “Emergencies,”
19 makes no distinction between the most-often-experienced local emergency event and a longer
20 duration event; and

21 **WHEREAS**, the Alachua County Board of County Commissioners wishes to amend
22 Chapter 27, to more clearly set-out the entire Board’s role in longer duration events;

23 **NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY**
24 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AS FOLLOWS:**

25 **SECTION 1.** Chapter 27 of the Alachua County Code of Ordinances, entitled
26 “Emergencies,” is hereby amended as follows:

27 **CHAPTER 27. - EMERGENCIES**

28 **ARTICLE I. - IN GENERAL**

29 **Sec. 27.01. Definitions.**

30 As used in this article the following words and terms shall have the meanings
31 respectively ascribed.

32 1. Alachua County Emergency Management means the organization created in
33 accordance with the provisions of F.S. §§ 252.31—252.91 to discharge the emergency

1 management responsibilities and functions of Alachua County, directed by the Emergency
2 Management Director, subject only to the direction and control of the Board acting through the
3 County Manager.

4 2. Board means the Alachua County Board of County Commissioners.

5 3. County manager means the county manager duly appointed by the Alachua
6 County Board of County Commissioners or, in the manager's absence, any individual designated,
7 in writing, to act in his/her stead during the course of that absence.

8 4. Disaster means any natural, technological, or civil emergency that causes damage
9 of sufficient severity and magnitude to result in a declaration of a state of emergency by Alachua
10 County, the Governor, or the President of the United States. Disasters shall be identified by the
11 severity of resulting damage, as follows:

12 a) Catastrophic disaster means a disaster that will require Alachua County to
13 seek massive state and federal assistance, including immediate military
14 involvement.

15 b) Major disaster means a disaster that will likely exceed Alachua County's
16 capabilities and require a broad range of state and federal assistance.

17 c) Minor disaster means the disaster that is likely to be within the response
18 capabilities of Alachua County and to result in only a minimal need for state
19 or federal assistance.

20 5. Emergency means any occurrence, or threat thereof, whether natural,
21 technological or manmade, in war or in peace, which results or may result in substantial injury or
22 harm to the population or substantial damage to or loss of property.

23 6. Emergency management means the protection against, prevention of, the response to, the
24 recovery from, and the mitigation against emergencies and disasters. Specific emergency
25 management responsibilities include, but are not limited to~~Emergency management means~~
26 ~~the preparation for, the mitigation of, the response to, and the recovery from emergencies and~~
27 ~~disasters. Specific emergency management responsibilities include, but are not limited to:~~

28 a) Reduction of vulnerability of people and communities of this state-county to
29 damage, injury, and loss of life and property resulting from natural,
30 technological, or manmade emergencies, catastrophes or hostile military or
31 paramilitary action.

32 b) Preparation for prompt and efficient response and recovery to protect lives
33 and property affected by emergencies, rescue, care, and treatment of persons
34 victimized or threatened by disasters.

35 c) Response to emergencies using all systems, plans, and resources necessary to
36 preserve adequately the health, safety, and welfare of persons or property
37 affected by the emergency.

38 d) Recovery from emergencies by providing for the rapid and orderly start of
39 restoration and rehabilitation of persons and property affected by emergencies.

40 e) Provision of an emergency management system embodying all aspects of prevention,
41 protection, response, recovery, and mitigation~~Provision of an emergency management~~

1 ~~system embodying all aspects of pre-emergency preparedness and post emergency~~
2 ~~response, recovery, and mitigation.~~

3 f) Assistance in anticipation, recognition, appraisal, prevention, and mitigation
4 of emergencies which may be caused or aggravated by inadequate planning
5 for, and regulation of, public and private facilities and land use.

6 7. General emergency means an ~~emergency which~~emergency, which affects the
7 entire county. Examples of county-wide emergencies include, but are not limited to, hurricanes,
8 tropical storms, large flood events, and acts of war or sedition.

9 8. Localized county emergency means an emergency that affects only a small part of
10 the county. Examples of localized emergencies include, but are not limited to, small plane
11 crashes, hazardous material spills, wildfires and leaking gas mains.

12 9. Manmade emergency means an emergency caused by an action against persons or
13 society, including, but not limited to, enemy attack, sabotage, terrorism, civil unrest, or other
14 action impairing the orderly administration of government.

15 10. Natural emergency means an emergency caused by a natural event, including, but
16 not limited to, a hurricane, storm, fire, flood, severe wave action, drought, or earthquake.

17 11. Plan means the Alachua County Comprehensive Emergency Management Plan or
18 its successor, as adopted by resolution by the board from time to time, and approved by the
19 Florida Division of Emergency Management.

20 12. Technological emergency means an emergency caused by a technological failure
21 or accident, including, but not limited to, an explosion, transportation accident, radiological
22 accident, or chemical or other hazardous material incident.

23 13. Volunteer means contributing service, equipment or facilities to the emergency
24 management agency without remuneration or without formal agreement or contract of hire.
25 Persons engaged in such services have the same immunities as persons and employees of the
26 county performing similar duties.

27 **Sec. 27.02. - Penalties.**

28 Any person convicted of a violation of, or failure to comply with, any of the provisions
29 of this chapter shall be punished for a violation of this Code. A penalty or civil fine may be set
30 by emergency order. In addition to the foregoing, and after reasonable due process
31 considerations, nothing herein shall prohibit the Board or its designee from also suspending or
32 revoking any license or permit previously issued by the County to any violator. Nothing herein
33 shall prevent the Board from taking such other lawful action as is necessary to prevent or
34 remedy any refusal to comply with, or violation of, this chapter or the emergency measures
35 which may be made effective pursuant hereto.

36 **Sec. 27.03. - Authority; purpose of chapter.**

37 Chapter 252, Florida Statutes, authorizes the waiver of procedures and formalities
38 otherwise required of political subdivisions to take whatever prudent action is necessary to
39 ensure the health, safety, and welfare of the community in the event of a state of emergency. In
40 accordance with and pursuant to this authority, the board hereby establishes emergency
41 management regulations to provide effective and orderly governmental control and coordination
42 of emergency operations. It is the intent of this article to ensure that preparations of the county
43 will be adequate to deal with, reduce vulnerability to, and to recover from emergencies, or

1 threats thereof, in order to safeguard the life and property of its citizens, to designate a county
2 official to declare states of emergency and issue orders in the event of a disaster or emergency,
3 or the imminent threat thereof, and to authorize certain actions relating thereto.

4 **Sec. 27.04. - Territorial jurisdiction.**

5 This chapter shall be applicable and enforceable throughout the entire geographical area
6 of the county.

7 **Sec. 27.05. - Chapter to be liberally construed.**

8 This chapter shall be liberally construed in order to carry out the purposes hereof
9 effectively. Such purposes are deemed to be in the best interest of the public health, safety, and
10 welfare of the citizens and residents of the county.

11 **Sec. 27.06. - Conflicting provisions.**

12 In the event this chapter conflicts with any other ordinance of the county or other
13 applicable law, the more restrictive shall apply.

14 **Sec. 27.07. - Declarations of emergency; general; localized—Procedure.**

15 1. A state of emergency shall be declared by proclamation of an official authority as
16 designated in this section. The duration of a state of emergency shall be limited to seven days;
17 however, it may be extended, as necessary, in seven day increments by the same procedure as set
18 forth in this section. Upon finding that the threat no longer exists, the board, or, if a quorum of
19 the board is unable to meet, an official authority, may, by proclamation, terminate the state of
20 emergency in the same manner as declaration.

21 2. A proclamation declaring a state of emergency shall activate the Plan and shall be
22 the authority for use or distribution of any supplies, equipment, materials, and facilities
23 assembled or arranged to be made available pursuant to such plan.

24 3. If a state of emergency is declared in the county, the county manager may request
25 state assistance or invoke emergency-related mutual-aid assistance where the circumstances
26 warrant such action.

27 4. Declaration of general emergency. A general state of emergency may only be
28 declared by a special meeting of the Board. If, after reasonable effort, a special emergency
29 meeting cannot be convened, then a state of emergency may be proclaimed by the official
30 authority. The official authority shall be the board chair, or, in the absence of the chair, the vice-
31 chair, or, in the absence of both the chair and vice-chair, any available commissioner. ~~In the~~
32 event neither the chair, nor the vice-chair, nor any other commissioner can be located, the official
33 authority shall be the county manager, or other county employee designated by the county
34 manager. The declaration or any subsequent order, in the absence of a quorum of the Board, may
35 authorize any of the powers set forth in Sec. 27.09. ~~the next available assistant county manager,~~
36 ~~or the next available county officer, official or employee who has been identified in the order of~~
37 ~~succession as provided herein shall be the official authority. The county manager shall provide~~
38 ~~the members of the Board with a memorandum setting forth her line of succession in accordance~~
39 ~~with this provision. This memorandum shall be updated at least once a year.~~

40 5. Declaration of localized emergency. The board hereby designates the county
41 manager as the official authority during a localized county emergency, and authorizes the county
42 manager to carry out all emergency management functions required by such emergency. In the
43 event the county manager cannot be located, the official authority shall be the next available

1 assistant county manager, or the next available county officer, official or employee who has been
2 identified in the order of succession as provided herein. The duration of each localized state of
3 emergency shall be no longer than that necessary to ensure the health, safety and welfare of the
4 population, but in no event shall such declaration exceed seven days. A localized state of
5 emergency may be extended in increments of up to seven days pursuant to the procedure set
6 forth in subsection 27.07(4).

7 6. Order of succession. The county manager shall identify the specific order of
8 succession and shall advise the Board of this succession annually, and whenever any changes are
9 made to the order of succession.

10 7. Nothing in this chapter shall be construed to limit the authority of the board to
11 declare or terminate a state of emergency and take any action authorized by law when sitting in
12 regular or special session. Nothing in this chapter shall be construed to limit, modify, or abridge
13 the authority of the President of the United States of America, or the governor of the state, to
14 proclaim martial law or exercise any other powers vested in him under the constitution, statutes,
15 or common law of the United States of America, or the state, independent of or in conjunction
16 with any federal disaster and emergency management provisions of Part I, Chapter 252, Florida
17 Statutes.

18 **Sec. 27.08. - Official authority; general powers and duties.**

19 1. In addition to any other powers conferred by law, rule, regulation or other
20 ordinances, upon the declaration of a state of emergency, an official authority, as designated in
21 section 27.07, may impose by executive order any or all of the following restrictions:

- 22 a) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
23 firearms, explosives, and combustibles, or;
- 24 b) Prohibit or regulate any demonstration, parade, march, vigil, or participation
25 therein from taking place on any public right-of-way or upon any public
26 property;
- 27 c) Prohibit or regulate the sale or use of gasoline, kerosene, naphtha, or any other
28 explosive or flammable fluids or substances altogether, except by delivery
29 into a tank properly affixed to an operable vehicle;
- 30 d) Prohibit or regulate the participation in or carrying on of any business activity
31 and prohibit or regulate the keeping open of places of business, places of
32 entertainment, and any other places of public assembly;
- 33 e) Prohibit or regulate travel upon any public street, highway, or upon any other
34 public property. Persons in search of medical assistance, food, or other
35 commodity or service necessary to sustain the well-being of themselves or
36 their families, or some member thereof, may be exempted/excepted from such
37 prohibition or regulation;
- 38 f) Impose a curfew upon all or any portion of the county, thereby prohibiting
39 persons from being on public streets, highways, parks, or other public places
40 during the hours the curfew is in effect;
- 41 g) Prohibit state and/or local business licensees, vendors, merchants, and any
42 other person operating a retail business from charging more than the normal
43 average retail price for any goods, materials, or services sold during a declared

1 state of local emergency, except when the wholesale price or the cost of
2 obtaining the merchandise is increased as a result of the local emergency. The
3 average retail price, as used herein, is defined to be that price which is the
4 average of any two prices for similar goods, material, or services sold during
5 the 12 months immediately preceding the declared state of emergency; and

6 h) Prohibit any person, firm, or corporation from using public fresh water
7 supplies for any purpose other than cooking, drinking, or bathing.

8 i) Declare certain areas off limits.

9 j) Direct or compel the evacuation of all or part of the population from any
10 affected or threatened part of the county.

11 j)k) Take such other action as may be reasonably required under the circumstances
12 except as otherwise specifically limited by the Board of County
13 Commissioners.;

14 2. The executive orders of an official authority may exempt, from all or part of any
15 restrictions, physicians, nurses, and ambulance operators performing medical services; on-duty
16 employees of hospitals and other medical facilities; on-duty military personnel; bona fide
17 members of the news media; personnel of public utilities maintaining essential public services;
18 county authorized and requested firefighters, law enforcement officers and emergency response
19 personnel; and such other classes of persons as may be essential to the preservation of public
20 order or necessary to serve safety, health, and welfare needs of the people within the county.

21 3. Pursuant to F.S. § 252.46(2), all executive orders and emergency rules imposed
22 and enacted by an official authority pursuant to this article shall be reduced to writing as soon as
23 possible, filed with the office of the clerk to the board, and concurrently posted prominently
24 upon the premises then serving as the headquarters of county governmental operations or posted
25 on the County's webpage. Further, copies of all such executive orders and emergency rules shall
26 be delivered, as soon as possible to representatives of the print and electronic news media and all
27 appropriate law enforcement officers and other appropriate government administration officials.

28 4. Content of orders and rules. All executive orders and emergency rules issued
29 under this section shall indicate the nature of the emergency, the threatened area or areas of the
30 county, and the conditions creating the disaster or threat. The content of such orders shall be
31 promptly disseminated to the general public and to the governing bodies of the applicable
32 municipalities within Alachua County and contiguous counties.

33 5. In ordering and promulgating any executive order, the official authority shall rely
34 on the advice and input from available county staff, as well as state and federal
35 disaster/emergency management officials. Such executive orders shall be limited to those
36 necessary to eliminate or contain conditions that threaten the health, safety, or welfare of the
37 citizens of the county.

38 5-6. In the event of an- declared state of local ~~Continuing~~ Emergency lasting longer
39 than 30 days where the Board has commenced meeting, the Official Authority shall report to the
40 Board all actions taken, pursuant to Sec. 27.08, since the last meeting of the Board, pursuant to
41 Sec. 27.08, along with any orders entered. The Board may take such action as it deems
42 appropriate at the time. Unless modified or repealed, the actions taken by the Official Authority shall
43 stand as ratified by the Board, as defined by the local state of emergency~~Unless modified or~~
44 ~~repealed, the actions taken by the Official Authority shall stand as ratified by the Board.~~

1 **Sec. 27.09. - Board; general powers and duties.**

2 1. The board shall, in addition to any other powers conferred by law, rule, regulation
3 or other ordinances, have the power and authority to waive the procedures and formalities
4 otherwise required by law pertaining to:

- 5 a) The performance of public work and taking whatever prudent action is
6 necessary to ensure the health, safety and welfare of the community.
- 7 b) Entering into contracts.
- 8 c) Incurring of obligations.
- 9 d) Employment of permanent and temporary workers.
- 10 e) Utilization of volunteer workers.
- 11 f) Rental of equipment.
- 12 g) Acquisition and distribution, with or without compensation, of supplies,
13 materials, and facilities.
- 14 h) Appropriation and expenditure of public funds.

15 2. The board shall, in addition to any other powers conferred by law, rule, regulation
16 or other ordinances, have the power and authority to:

- 17 a) Determine that a threat to public health and safety may result from the
18 generation of widespread debris throughout the county, using any of the
19 following criteria:
 - 20 1) That such debris constitutes a hazardous environment for modes of
21 movement and transportation of the residents as well as emergency aid
22 and relief services;
 - 23 2) That such debris may endanger properties in the county;
 - 24 3) An environment conducive to breeding disease and vermin;
 - 25 4) Greatly increased risk of fire; and
 - 26 5) That it is in the public interest to collect and remove disaster debris
27 from property whether public or private lands, or public or private roads to
28 eliminate any immediate threat to life, public health and safety;
 - 29 6) To reduce the threat of additional damage to improved property;
30 and
 - 31 7) To promote economic recovery of the community at large.
- 32 b) With the consent of the property owner, authorize the county or its contracted
33 agents the right of access to private property and roads or gated communities
34 as needed by emergency vehicles such as, but not limited to, police, fire,
35 medical care, debris removal, and sanitation to alleviate immediate threats to
36 public health and safety and to provide emergency repairs to vital
37 infrastructure assets.
- 38 c) With the consent of the property owner, authorize the removal of debris and
39 wreckage resulting from a major disaster from property whether public or

1 private lands, public or private roads, or within gated communities for safe
2 and sanitary living or functioning conditions.

3 d) Authorize the removal of derelict vessels from public water bodies pursuant to
4 current Statutes of the State of Florida and in conjunction with the Florida
5 Fish and Wildlife Conservation Commission.

6 e) Authorize the removal of abandoned vehicles pursuant to current Statutes of
7 the State of Florida and in conjunction with law enforcement of the county
8 and state.

9 f) Authorize the temporary suspension of the enforcement of the Alachua
10 County Code, where the emergency is of such nature that immediate action
11 outside the Code is required.

12 **Sec. 27.10. - County manager; general powers and duties.**

13 The county manager shall, in addition to any other powers conferred by law, rule,
14 regulation or other ordinances, have the authority to take appropriate emergency measures
15 without further board action. Appropriate measures include, but are not limited to:

16 1) Appropriate and expend funds; make contracts; obtain and distribute
17 equipment, materials, and supplies for emergency management purposes;
18 provide for the health and safety of persons and property, including
19 emergency assistance to the victims of any emergency; and direct and
20 coordinate the development of emergency management plans and
21 programs in accordance with the policies and plans set by the federal and
22 state emergency management agencies.

23 2) Appoint, employ, remove, or provide, with or without compensation,
24 coordinators, rescue teams, fire and police personnel, and other emergency
25 workers.

26 3) Establish, as necessary, a primary and one or more secondary emergency
27 operating centers to provide continuity of government and direction and
28 control of emergency operations.

29 4) Assign and make available for duty the offices and agencies of the county,
30 including employees, property or equipment thereof relating to
31 firefighting, engineering, rescue, health, medical and related services,
32 police, transportation, construction, and similar items that are services for
33 emergency operation purposes, as the primary emergency management
34 forces of the county for development within or outside the political limits
35 of the county.

36 5) Perform public work in taking whatever prudent action is necessary to
37 insure the health, safety and welfare of the community;

38 6) Utilize all available resources of the county government as reasonably
39 necessary to cope with the disaster emergency, including emergency
40 expenditures;

41 7) Make provisions for availability and use of temporary emergency housing
42 and emergency warehousing of materials;

- 1 8) Establish shelters in addition to, or in place of, those provided for in the
- 2 county's plan;
- 3 9) Enter into contracts;
- 4 10) Incur obligations;
- 5 11) Employ permanent and temporary workers;
- 6 12) Utilize voluntary workers;
- 7 13) Rent equipment;
- 8 14) Acquire and distribute, with or without compensation, supplies, materials,
- 9 and facilities;
- 10 15) Authorize expenditure of public funds;
- 11 16) Acquire merchandise, equipment, vehicles, or property needed to alleviate
- 12 the emergency; and
- 13 17) In the absence of a quorum of the board, absence of the chair, absence of
- 14 the vice chair and absence of any other county commissioner, the county
- 15 manager may call on the national guard or other law enforcement
- 16 divisions, in consultation with the Alachua County Sheriff, and request
- 17 state and federal assistance as necessary to assist in the mitigation of the
- 18 emergency, or to help maintain law and order, rescue assistance, and
- 19 traffic control.

20 Nothing within this section shall be construed to limit the usual powers and duties of the

21 county manager as conferred on him by the board and under Alachua County's Charter.

22 **Sec. 27.10.1. - Emergency management director; general powers and duties.**

- 23 1) There is established the position of emergency management director, which, for
- 24 the purpose of this section shall be referred to as director. The director shall
- 25 supervise the day-to-day operations of the emergency management division. The
- 26 director shall be designated by, serve at the pleasure of the county manager in
- 27 accordance with the Policies and Procedures of the Board of County
- 28 Commissioners as they are amended from time to time. The director shall be
- 29 placed in the organizational chart of the county pursuant to the county manager's
- 30 authority. During periods of declared emergency the director shall directly report
- 31 to the county manager. The director shall have those responsibilities as
- 32 designated by the county manager consistent with section 27.10, and those
- 33 enumerated in F.S. § 252.38 for directors of county emergency management
- 34 agencies, including, but not limited to direct responsibility for the structure,
- 35 administration, and operation of the emergency management division;
- 36 coordination of emergency management activities, services, and programs within
- 37 the county; and shall serve as a liaison to the state division of emergency
- 38 management, or its successor, and to other local emergency management
- 39 agencies and organizations.
- 40 2) The director or designee shall monitor and advise the chair and the manager of
- 41 any threat, emergency or disaster that may pose a risk to the lives and safety of
- 42 the population of Alachua County, and the protective actions the county may take

1 to safeguard life and property, which actions may include compelling the
2 evacuation of all or part of the population from the affected or threatened area
3 within the county.

- 4 3) Upon declaration of a state of emergency, the director or designee will serve as
5 the county coordinating officer and shall direct all activities of the emergency
6 operations center.

7 **Sec. 27.10.2. - Imposition or demand of exorbitant or excessive price during**
8 **shortages created during declared emergencies.**

- 9 1) *Findings of fact. The board does hereby find:*

- 10 a. During periods of local and state emergency, sources of fuel, medicine,
11 food, building supplies or other necessities are sometimes destroyed,
12 damaged or otherwise severely restricted in supply.
- 13 b. During periods of local and state emergency unscrupulous opportunists
14 may take advantage of the citizens of the county who require the above
15 described necessities to sustain themselves by requiring the payment of
16 excessive or unconscionable prices to provide services and various
17 commodities needed by the victims of a natural or manmade disaster.
- 18 c. The board finds it appropriate and in the interest of the health, safety and
19 welfare of the citizens of the county to protect potential victims of
20 unscrupulous pricing practices from those that would take advantage of
21 citizens needing services and commodities as a result of a natural or
22 manmade disaster.

- 23 2) *As used in this section:*

- 24 a. Commodity means any goods, services, materials, merchandise, supplies,
25 equipment, resources, or other article of commerce, and includes, without
26 limitation, food, water, ice, chemicals, petroleum products, and lumber
27 necessary for consumption or use as a direct result of the emergency.
- 28 b. It is prima facie evidence that a price is unconscionable if:
- 29 1. The amount charged represents a gross disparity between the price of
30 the commodity or rental or lease of any dwelling unit or self-storage
31 facility that is the subject of the offer or transaction and the average
32 price at which that commodity or dwelling unit or self-storage facility
33 was rented, leased, sold, or offered for rent or sale in the usual course
34 of business during the 30 days immediately prior to a declaration of a
35 state of emergency, unless the increase in the amount charged is
36 attributable to additional costs incurred in connection with the rental or
37 sale of the commodity or rental or lease of any dwelling unit or self-
38 storage facility, or regional, national or international market trends; or
- 39 2. The amount charged grossly exceeds the average price at which the
40 same or similar commodity was readily obtainable in the trade area
41 during the 30 days immediately prior to a declaration of a state of
42 emergency, unless the increase in the amount charged is attributable to
43 additional costs incurred in connection with the rental or sale of the

1 commodity or rental or lease of any dwelling unit or self-storage
2 facility, or regional, national or international market trends.

3 3) *Prohibition against unconscionable prices.*

- 4 a. Upon a declaration of a state of emergency by the governor and/or upon
5 declaration of a state of emergency pursuant to this chapter, it is a
6 violation of this section for a person or his or her agent or employee to
7 rent or sell or offer to rent or sell at an unconscionable price within the
8 area for which the state of emergency is declared, any essential
9 commodity, including but not limited to, supplies, services, provisions or
10 equipment that is necessary for consumption or use as a direct result of
11 the emergency. This prohibition remains in effect until the direct
12 declaration expires or is terminated.
- 13 b. It is a violation of this section for any person to impose unconscionable
14 prices for the rental or lease of any dwelling unit or self-storage facility
15 during a period of declared state of emergency.
- 16 c. A price increase approved by an appropriate government agency shall not
17 be in violation of this section.
- 18 d. This section shall not apply to sales by growers, producers, or processors
19 of raw or processed food products, except for retail sales of such products
20 to the ultimate consumer within the area of the declared state of
21 emergency.
- 22 e. During a declared emergency and when there is an allegation of price
23 gouging against the person, failure to possess a business tax receipt
24 pursuant to Chapter 205, Florida Statutes, constitutes reasonable cause to
25 detain the person, provided that the detention shall only be made in a
26 reasonable manner and only for a reasonable period of time sufficient for
27 an inquiry into the circumstances surrounding the failure to possess a tax
28 receipt. During a declared emergency, this subsection does not apply to
29 religious, charitable, fraternal, civic, educational, or social organizations.

30 4) *Enforcement.*

- 31 1. All law enforcement agencies, including but not limited to the Alachua
32 County Sheriff's Office, the Gainesville, Alachua and High Springs
33 Police Departments are hereby authorized to take all necessary legal
34 measures to curtail violations of this section.
- 35 2. Any person subject to any violation of this section shall be entitled to
36 seek such relief or remedies as are provided for in chapter 501, part II,
37 F.S., or other laws of the state.
- 38 3. Nothing in this section creates a private cause of action in favor of any
39 person damaged by a violation of this section.

40 5) *Incorporation of § 501.160, F.S., and ch. 501 et seq., Florida Deceptive and*
41 *Unfair Trade Practices Act.* All sections and provisions of § 501.160, F.S., and
42 ch. 501, part II, F.S., known as the Florida Deceptive and Unfair Trade Practices
43 Act, are hereby incorporated by reference.

- 1 6) *Penalties.* If prosecuted pursuant to this section, a person shall be punished for a
2 violation of this Code. If action is pursued civilly, any person found to have
3 violated this section shall be subject to the penalties prescribed in § 501.164,
4 F.S., in addition to all other remedies provided by the Florida Deceptive and
5 Unfair Trade Practices Act. Each transaction made in violation of this section
6 shall be considered a separate offense.

7 **ARTICLE II. - HAZARDOUS MATERIALS INCIDENT**
8 **COST RECOVERY ORDINANCE**

9 **Sec. 27.11. - Title.**

10 This article shall be known as the "Hazardous Material Incident Cost Recovery
11 Ordinance."

12 **Sec. 27.12. - Intent and purpose.**

13 This article is intended to provide for recovery by Alachua County, a charter county and
14 political subdivision of the State of Florida, its agencies or agents, and the municipalities within
15 the county, of unbudgeted costs incurred in response and recovery efforts related to hazardous
16 material incidents. In addition, it is intended to provide for cost recovery for damages to natural
17 resources, and government owned properties.

18 **Sec. 27.13. - Authority.**

19 The county board of county commissioners has the authority to adopt this article
20 pursuant to the provision of F.S. chs. 125 and 252.

21 **Sec. 27.14. - Jurisdiction.**

22 This article shall apply to the Cities of Archer, Hawthorne, Newberry, and Waldo, and
23 the unincorporated area of Alachua County, Florida.

24 **Sec. 27.15. - Definitions.**

25 [As used in this article, the following words and phrases shall have the meaning
26 indicated unless the context otherwise requires:]

27 Cost(s) means and includes, but is not limited to those expenses that are extraordinary in
28 nature, including those for which funds are not provided for in the county's annual budget:

- 29 1) All costs incurred for response, containment and/or removal and disposal of
30 hazardous materials or remedial actions to include costs associated with
31 transportation and temporary storage of hazardous materials.
- 32 2) All costs incurred for ensuring the safety of the public to include costs incurred
33 for actions taken on and off the site of the hazardous material incident.
- 34 3) Damages for injury to, destruction of, or loss of natural resources, as determined
35 by the appropriate local, state or federal agency, including the reasonable costs
36 of assessing such injury, destruction, or loss resulting from a hazardous material
37 incident.
- 38 4) Health care costs for persons or animals injured from a hazardous material
39 incident or costs of any health assessment or health effects study carried out as a
40 necessity resulting from a hazardous material incident.

- 1 5) Labor, including benefits, overtime and administrative overhead for government
2 employees.
- 3 6) The costs of operating, maintaining, leasing, repairing and replacing equipment.
- 4 7) Contract labor and equipment.
- 5 8) Labor and equipment obtained by Alachua County, Alachua County agencies or
6 agents, and the municipalities.
- 7 9) Materials, including but not limited to, absorbents, foams, dispersants,
8 neutralization agents, overpack drums or containers.
- 9 10) Supervision of cleanup and abatement.

10 *Hazardous material* means any substance material defined, listed, characterized, or
11 classified as a hazardous material, hazardous substance, hazardous waste, or toxic substance
12 according to any or all of the following: Chapter 38F-41, Florida Administrative Code (Florida
13 Substance List); Title 40 Code of Federal Regulations Part 261 (Identification and Listing of
14 Hazardous Wastes); Title 40 Code of Federal Regulations Part 302.1.4 (Designation of Hazard
15 Substances); Title 40 Code of Federal Regulations Part 355, Appendices A and B (List of
16 Extremely Hazardous Substances), and Title 49 Code of Federal Regulations Parts 172.101 and
17 172.102 (Hazardous Materials Table).

18 *Hazardous material incident* means actual or threatened release of hazardous substances
19 or material, including hazardous waste, which pose an imminent threat to the environment, and
20 to health, safety or welfare of the population.

21 *Hazardous substance* includes any solution, mixture, or formulation containing
22 hazardous material, or any material which, due to its chemical or physical characteristics, is
23 determined by the county to pose a substantial threat to the life, health, or safety of persons or
24 property or to the environment. The term includes, but is not limited to, explosives, radioactive
25 materials, petroleum products, gases, poisons, biologic agents, flammables and corrosives.

26 *Municipality* means any municipality within Alachua County.

27 *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking
28 water supplies, and other such resources belonging to, managed by, held in trust by,
29 appertaining to, or otherwise controlled by Alachua County, Alachua County agencies, and the
30 municipalities.

31 *Person* means an individual, firm, corporation, association, partnership, commercial
32 entity, consortium, joint venture, governmental entity, or any other legal entity.

33 *Recovery* means restoration to pre-event conditions.

34 *Release* means the accidental or intentional, sudden or gradual spilling, leaking,
35 pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or
36 disposing into the environment (including the abandonment or discarding of barrels, containers
37 and other receptacles containing any hazardous material or substance or waste or pollutant or
38 contaminant).

39 *Response* means the provision of emergency and nonemergency assistance during and
40 following an incident and to reduce the likelihood of secondary damage.

1 *Responsible party* means the person(s) whose act or omission caused a release; or, the
2 person(s) who owned or had custody or control of the hazardous substance or waste at the time
3 of such release without regard to fault or proximate cause; or, the person or persons who owned
4 or had custody or control of the container which held the hazardous substance at the time or
5 immediately prior to such release without regard to fault or proximate cause.

6 **Sec. 27.16. - Hazardous materials incidents—Liability for costs.**

- 7 a) *Liability for costs.* Any responsible party who causes a hazardous material
8 incident shall be liable for the payment of all reasonable and necessary
9 extraordinary and unbudgeted costs incurred by the county, county agencies or
10 agents, and the municipalities for response to and remediation of such an
11 incident.
- 12 b) *Remedies at law.* The county will seek all available remedies at law, to include
13 the provisions of this article, against any parties responsible for any hazardous
14 materials event, to include those actions and remedies available under the U.S.
15 Bankruptcy Code relating to such matters.

16 **Sec. 27.17. - Collection and disbursement of funds for cost recovery.**

- 17 a) *Agent for collection.* The county department of finance and accounting shall
18 serve as the county's agent for collecting invoices and billing the responsible
19 party for costs in the unincorporated area. Agencies of the county and agencies
20 responding to a hazardous material incident in the unincorporated area of the
21 county according to the responsibilities set forth in the local emergency planning
22 committee hazardous material response plan or at the request of the county are
23 eligible to submit bills.
- 24 b) *Procedure for submitting invoices.* An invoice identifying eligible costs under
25 this article shall be submitted to the county department of finance and accounting
26 within a reasonable time after the cost was incurred or identified. Submitted
27 invoices must include sufficient documentation for cost reimbursement (i.e.
28 copies of time sheets for specific personnel, copies of bills for materials,
29 equipment and supplies procured or used, etc.). Accepting invoices from
30 agencies outside the county shall not incur liability to the county to pay costs
31 from such agencies until payment is received by the county from the responsible
32 party.
- 33 c) *Method of payment.* The county department of finance and administrative
34 services shall submit one or a series of consolidated invoices to the responsible
35 party identifying agencies, agents or municipalities and their specific costs or
36 reimbursements. The responsible party shall issue a certified check made payable
37 to each governmental entity that responded and submitted an invoice. The checks
38 will be sent to Alachua County within 60 days of receiving a consolidated
39 invoice.

40 **Sec. 27.18. - Methods of enforcement.**

- 41 a) *Civil action.* The county may enforce these provisions by civil action in a court
42 of competent jurisdiction for the collection of any amounts due hereunder plus
43 administrative collection costs, attorneys' fees, or for any other relief that may be
44 appropriate. A certified copy of a judgment in favor of the county may be

1 recorded in the public records and thereafter shall constitute a lien upon any real
2 or personal property owned by such person(s) and such lien shall be coequal with
3 the lien of all state, district and municipal taxes superior in dignity to all other
4 liens, titles, and claims until paid or extinguished.

5 b) *Other remedies.* This article shall not prohibit the county from pursuing any other
6 remedy, whether civil or criminal, or from instituting any appropriate action or
7 proceedings, including injunction in a court of competent jurisdiction. Nor shall
8 the recovery of expenses under this article in any way release the various parties,
9 or limit them, from legal liability incurred as a result of hazardous material
10 cleanup or abatement as defined under any local, state or federal rule or
11 regulation.

12 **Sec. 27.19. - Conflict with other laws.**

13 Whenever the requirements or provisions of this article are in conflict with the
14 requirements or provisions of any other lawfully adopted ordinance, the more restrictive
15 requirements shall apply. Further, this article shall not restrict or replace cost recovery from
16 funding sources available under state and federal regulations including but not limited to the
17 revolving fund established under section 311(K) of the Federal Water Pollution Trust Fund
18 established under Comprehensive Environmental Response, Compensation and Liability Act (42
19 USC 9611); the Hazardous Materials Administration Trust Fund established under F.S. ch. 252,
20 and the Florida Coastal Protection Trust Fund established under F.S. ch. 376.

21 **SECTION 2. Repealing Clause.** All ordinances or portions thereof in conflict herewith
22 are, to the extent of such conflict, hereby repealed.

23 **SECTION 3. Modification.** It is the intent of the Board of County Commissioners that
24 the provisions of this ordinance may be modified as a result of considerations that may arise
25 during public hearings. Such modifications shall be incorporated into the final version of the
26 ordinance adopted by the Board and filed by the Clerk to the Board.

27 **SECTION 4. Severability.** If any word, phrase, clause, paragraph, section or provision
28 of this ordinance or the application hereof to any person or circumstance is held invalid or
29 unconstitutional, such finding shall not affect the other provisions or applications of the
30 ordinance which can be given effect without the invalid or unconstitutional provisions or
31 application, and to this end the provisions of this ordinance are declared severable.

32 **SECTION 5. Inclusion in the Code.** It is the intent of the Board of County
33 Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this

1 ordinance shall become and be made a part of the Code of Ordinances of Alachua County,
2 Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such
3 intent and that the word “ordinance” may be changed to “section”, “article”, or other appropriate
4 designation.

5 **SECTION 6. Effective Date.** A certified copy of this ordinance shall be filed with the
6 Department of State by the Clerk of the Board within ten (10) days after enactment by the
7 Board and shall take effect upon filing with the Department of State.

8
9 **DULY ADOPTED** in regular session, this ___ day of _____, 2020.

10
11 **BOARD OF COUNTY COMMISSIONERS OF**
12 **ALACHUA COUNTY, FLORIDA**

13
14 ATTEST:

15 BY: _____
16 Robert Hutchinson, Chair
17 Board of County Commissioners

18 _____
19 J.K. “Jess” Irby, Esq.
20 Clerk

APPROVED AS TO FORM

21 _____
22 County Attorney

23 (SEAL)