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ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO: 2019-_____

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AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA; REPEALING ORDINANCE 2019-14 OF THE ALACHUA COUNTY CODE OF ORDINANCES RELATING TO PROHIBITIONS ON POLYSTYRENE AND SINGLE-USE PLASTIC BAGS; ESTABLISHING THE INTENT AND APPLICABILITY; REPEALING ALL ORDINANCES, OR PORTIONS THEREOF, IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; ALLOWING FOR MODIFICATION OF THE LANGUAGE OF THE ORDINANCE DUE TO CONSIDERATIONS ARISING AT A PUBLIC HEARING; PROVIDING EFFECTIVE DATE.

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WHEREAS, the Alachua County Board of County Commissioners (herein, “Board”) adopted Ordinance 2019-14, prohibiting the use of expanded polystyrene containers and single-use carry out plastic bag in unincorporated Alachua County, on July 9, 2019;

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WHEREAS, the Board continues to declare that it is the best interest of the public health, safety and welfare of its residents and visitors to reduce litter and pollutants on the land and in the waters of the unincorporated areas of Alachua County; and

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WHEREAS, the Board continues to declare that the use and distribution of expanded polystyrene containers and single-use carry out plastic bags by retainers to consumers for use in carrying purchased goods has a detrimental effect on public health, safety and welfare of Alachua County; and

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WHEREAS, on July 15, 2019, the County received a notice from the Florida Retail Federation and the Florida Restaurant & Lodging Association (pursuant to the new statute) requesting that the County repeal Ordinance No. 2019-14 regarding the prohibition of single-use plastic bags and expanded polystyrene containers, claiming that the regulation is expressly preempted to the State by Sections 403.7033 and 500.90, Fla. Statutes; and

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WHEREAS, the Florida Retail Federation and the Florida Restaurant & Lodging Association wrote in its notice that the letter was “official notice required by Chapter 57.112” Florida Statutes; and

1 **WHEREAS**, Section 57.112, Florida Statutes states, in relevant part, “[i]f a civil action is filed
2 against a local government to challenge the adoption or enforcement of a local ordinance on the grounds
3 that it is expressly preempted by the State Constitution or by state law, the court shall assess and award
4 reasonable attorney fees and costs and damages to the prevailing party” but that attorney fees and costs may
5 not be awarded if the local government acts within 30 days to notice an intent to repeal the ordinance and
6 then acts within 30 days of the notice of intent to repeal the ordinance; and

7 **WHEREAS**, the Board authorized its Chair to sign a notice of intent to repeal Ordinance 2019-14
8 on August 13, 2019; and

9 **WHEREAS**, the Alachua County Board of County Commissioners finds that this Ordinance is in
10 the best interest of Alachua County at this time; and

11 **WHEREAS**, at least 10 days’ notice has been given once by publication in a newspaper of general
12 circulation notifying the public of this proposed ordinance and of the public hearing to be held in the John
13 "Jack" Durrance Auditorium, Board Room 209, County Administration Building, Gainesville, Florida; and

14 **WHEREAS**, the public hearing was held pursuant to the published notice described at which
15 hearing the parties in interest and all others had an opportunity to be and were, in fact heard.

16 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
17 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AS FOLLOWS:**

18 SECTION 1. Ordinance 2019-14 is repealed in its entirety.

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

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

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

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

9 **DULY ADOPTED** in regular session, this 10th day of September, 2019.

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

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14 ATTEST:

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18 Jesse K. Irby, II
19 Clerk of Court

BY:

Charles S. Chestnut, IV, Chair
Board of County Commissioners

20 APPROVED AS TO FORM:

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23 County Attorney

24 (SEAL)