

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

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

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

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

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

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

1 CHAPTER 27. - EMERGENCIES

2 ARTICLE I. - IN GENERAL

3 Sec. 27.01. - Definitions.

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

6 1. Alachua County Emergency Management means the organization created in
7 accordance with the provisions of F.S. §§ 252.31—252.91 to discharge the emergency
8 management responsibilities and functions of Alachua County, directed by the Emergency
9 Management Director, subject only to the direction and control of the Board acting through the
10 County Manager.

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

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

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

19 a) Catastrophic disaster means a disaster that will require Alachua County to
20 seek massive state and federal assistance, including immediate military
21 involvement.

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

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

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

7 6. Emergency management means the preparation for, the mitigation of, the
8 response to, and the recovery from emergencies and disasters. Specific emergency management
9 responsibilities include, but are not limited to:

10 a) Reduction of vulnerability of people and communities of this state to damage,
11 injury, and loss of life and property resulting from natural, technological, or
12 manmade emergencies, catastrophes or hostile military or paramilitary action.

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

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

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

21 e) Provision of an emergency management system embodying all aspects of pre-
22 emergency preparedness and post emergency response, recovery, and
23 mitigation.

24 f) Assistance in anticipation, recognition, appraisal, prevention, and mitigation

1 of emergencies which may be caused or aggravated by inadequate planning
2 for, and regulation of, public and private facilities and land use.

3 7. General emergency means an emergency which affects the entire county.

4 Examples of county-wide emergencies include, but are not limited to, hurricanes, tropical storms,
5 large flood events, and acts of war or sedition.

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

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

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

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

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

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

24 14. Continuing Emergency means an emergency which lasts longer than 30 days and

1 during which a quorum of the Board of County Commissioners can meet and conduct business.

2 Sec. 27.02. - Penalties.

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

11 Sec. 27.03. - Authority; purpose of chapter.

12 Chapter 252, Florida Statutes, authorizes the waiver of procedures and formalities
13 otherwise required of political subdivisions to take whatever prudent action is necessary to
14 ensure the health, safety, and welfare of the community in the event of a state of emergency. In
15 accordance with and pursuant to this authority, the board hereby establishes emergency
16 management regulations to provide effective and orderly governmental control and coordination
17 of emergency operations. It is the intent of this article to ensure that preparations of the county
18 will be adequate to deal with, reduce vulnerability to, and to recover from emergencies, or
19 threats thereof, in order to safeguard the life and property of its citizens, to designate a county
20 official to declare states of emergency and issue orders in the event of a disaster or emergency,
21 or the imminent threat thereof, and to authorize certain actions relating thereto.

1 Sec. 27.04. - Territorial jurisdiction.

2 This chapter shall be applicable and enforceable throughout the entire geographical area
3 of the county.

4 Sec. 27.05. - Chapter to be liberally construed.

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

8 Sec. 27.06. - Conflicting provisions.

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

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

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

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

21 3. If a state of emergency is declared in the county, the county manager may request
22 state assistance or invoke emergency-related mutual-aid assistance where the circumstances

1 warrant such action.

2 4. Declaration of general emergency. A general state of emergency may only be
3 declared by a special meeting of the Board. If, after reasonable effort, a special emergency
4 meeting cannot be convened, then a state of emergency may be proclaimed by the official
5 authority. The official authority shall be the board chair, or, in the absence of the chair, the vice-
6 chair, or, in the absence of both the chair and vice-chair, any available commissioner. In the
7 event neither the chair, nor the vice-chair, nor any other commissioner can be located, the official
8 authority shall be the county manager, or other county employee designated by the county
9 manager. The declaration or any subsequent order, in the absence of a quorum of the Board, may
10 authorize any of the powers set forth in Sec. 27.09. The county manager shall provide the
11 members of the Board with a memorandum setting forth her line of succession in accordance
12 with this provision. This memorandum shall be updated at least once a year.

13 5. Declaration of localized emergency. The board hereby designates the county
14 manager as the official authority during a localized county emergency, and authorizes the county
15 manager to carry out all emergency management functions required by such emergency. In the
16 event the county manager cannot be located, the official authority shall be the next available
17 assistant county manager, or the next available county officer, official or employee who has been
18 identified in the order of succession as provided herein. The duration of each localized state of
19 emergency shall be no longer than that necessary to ensure the health, safety and welfare of the
20 population, but in no event shall such declaration exceed seven days. A localized state of
21 emergency may be extended in increments of up to seven days pursuant to the procedure set
22 forth in subsection 27.07(4).

23 6. Order of succession. The county manager shall identify the specific order of
24 succession and shall advise the Board of this succession annually, and whenever any changes are

1 made to the order of succession.

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

10 Sec. 27.08. - Official authority; general powers and duties.

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

- 14 a) Suspend or limit the sale, dispensing, or transportation of alcoholic beverages,
15 firearms, explosives, and combustibles, or;
- 16 b) Prohibit or regulate any demonstration, parade, march, vigil, or participation
17 therein from taking place on any public right-of-way or upon any public
18 property;
- 19 c) Prohibit or regulate the sale or use of gasoline, kerosene, naphtha, or any other
20 explosive or flammable fluids or substances altogether, except by delivery
21 into a tank properly affixed to an operable vehicle;
- 22 d) Prohibit or regulate the participation in or carrying on of any business activity
23 and prohibit or regulate the keeping open of places of business, places of

- 1 entertainment, and any other places of public assembly;
- 2 e) Prohibit or regulate travel upon any public street, highway, or upon any other
3 public property. Persons in search of medical assistance, food, or other
4 commodity or service necessary to sustain the well-being of themselves or
5 their families, or some member thereof, may be exempted/excepted from such
6 prohibition or regulation;
- 7 f) Impose a curfew upon all or any portion of the county, thereby prohibiting
8 persons from being on public streets, highways, parks, or other public places
9 during the hours the curfew is in effect;
- 10 g) Prohibit state and/or local business licensees, vendors, merchants, and any
11 other person operating a retail business from charging more than the normal
12 average retail price for any goods, materials, or services sold during a declared
13 state of local emergency, except when the wholesale price or the cost of
14 obtaining the merchandise is increased as a result of the local emergency. The
15 average retail price, as used herein, is defined to be that price which is the
16 average of any two prices for similar goods, material, or services sold during
17 the 12 months immediately preceding the declared state of emergency; and
- 18 h) Prohibit any person, firm, or corporation from using public fresh water
19 supplies for any purpose other than cooking, drinking, or bathing.
- 20 i) Declare certain areas off limits.
- 21 j) Direct or compel the evacuation of all or part of the population from any
22 affected or threatened part of the county.
- 23 k) Take such other action as may be reasonably required under the
24 circumstances.

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

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

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

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

1 6. In the event of a Continuing Emergency, the Official Authority shall report to the
2 Board all actions taken since the last meeting of the Board, pursuant to Sec. 27.08, along with
3 any orders entered. The Board may take such action as it deems appropriate at the time. Unless
4 modified or repealed, the actions taken by the Official Authority shall stand as ratified by the
5 Board.

6 Sec. 27.09. - Board; general powers and duties.

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

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

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

- 22 a) Determine that a threat to public health and safety may result from the
23 generation of widespread debris throughout the county, using any of the

1 following criteria:

2 1) That such debris constitutes a hazardous environment for modes of
3 movement and transportation of the residents as well as emergency aid
4 and relief services;

5 2) That such debris may endanger properties in the county;

6 3) An environment conducive to breeding disease and vermin;

7 4) Greatly increased risk of fire; and

8 5) That it is in the public interest to collect and remove disaster debris
9 from property whether public or private lands, or public or private roads to
10 eliminate any immediate threat to life, public health and safety;

11 6) To reduce the threat of additional damage to improved property;
12 and

13 7) To promote economic recovery of the community at large.

14 b) With the consent of the property owner, authorize the county or its contracted
15 agents the right of access to private property and roads or gated communities
16 as needed by emergency vehicles such as, but not limited to, police, fire,
17 medical care, debris removal, and sanitation to alleviate immediate threats to
18 public health and safety and to provide emergency repairs to vital
19 infrastructure assets.

20 c) With the consent of the property owner, authorize the removal of debris and
21 wreckage resulting from a major disaster from property whether public or
22 private lands, public or private roads, or within gated communities for safe
23 and sanitary living or functioning conditions.

24 d) Authorize the removal of derelict vessels from public water bodies pursuant to

1 current Statutes of the State of Florida and in conjunction with the Florida
2 Fish and Wildlife Conservation Commission.

3 e) Authorize the removal of abandoned vehicles pursuant to current Statutes of
4 the State of Florida and in conjunction with law enforcement of the county
5 and state.

6 f) Authorize the temporary suspension of the enforcement of the Alachua
7 County Code, where the emergency is of such nature that immediate action
8 outside the Code is required.

9 Sec. 27.10. - County manager; general powers and duties.

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

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

20 2) Appoint, employ, remove, or provide, with or without compensation,
21 coordinators, rescue teams, fire and police personnel, and other emergency
22 workers.

23 3) Establish, as necessary, a primary and one or more secondary emergency

1 operating centers to provide continuity of government and direction and
2 control of emergency operations.

3 4) Assign and make available for duty the offices and agencies of the county,
4 including employees, property or equipment thereof relating to
5 firefighting, engineering, rescue, health, medical and related services,
6 police, transportation, construction, and similar items that are services for
7 emergency operation purposes, as the primary emergency management
8 forces of the county for development within or outside the political limits
9 of the county.

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

12 6) Utilize all available resources of the county government as reasonably
13 necessary to cope with the disaster emergency, including emergency
14 expenditures;

15 7) Make provisions for availability and use of temporary emergency housing
16 and emergency warehousing of materials;

17 8) Establish shelters in addition to, or in place of, those provided for in the
18 county's plan;

19 9) Enter into contracts;

20 10) Incur obligations;

21 11) Employ permanent and temporary workers;

22 12) Utilize voluntary workers;

23 13) Rent equipment;

24 14) Acquire and distribute, with or without compensation, supplies, materials,

- 1 and facilities;
- 2 15) Authorize expenditure of public funds;
- 3 16) Acquire merchandise, equipment, vehicles, or property needed to alleviate
- 4 the emergency; and
- 5 17) In the absence of a quorum of the board, absence of the chair, absence of
- 6 the vice chair and absence of any other county commissioner, the county
- 7 manager may call on the national guard or other law enforcement
- 8 divisions, in consultation with the Alachua County Sheriff, and request
- 9 state and federal assistance as necessary to assist in the mitigation of the
- 10 emergency, or to help maintain law and order, rescue assistance, and
- 11 traffic control.

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

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

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

- 15 1) There is established the position of emergency management director, which, for
- 16 the purpose of this section shall be referred to as director. The director shall
- 17 supervise the day-to-day operations of the emergency management division. The
- 18 director shall be designated by, serve at the pleasure of the county manager in
- 19 accordance with the Policies and Procedures of the Board of County
- 20 Commissioners as they are amended from time to time. The director shall be
- 21 placed in the organizational chart of the county pursuant to the county manager's
- 22 authority. During periods of declared emergency the director shall directly report
- 23 to the county manager. The director shall have those responsibilities as

1 designated by the county manager consistent with section 27.10, and those
2 enumerated in F.S. § 252.38 for directors of county emergency management
3 agencies, including, but not limited to direct responsibility for the structure,
4 administration, and operation of the emergency management division;
5 coordination of emergency management activities, services, and programs within
6 the county; and shall serve as a liaison to the state division of emergency
7 management, or its successor, and to other local emergency management
8 agencies and organizations.

9 2) The director or designee shall monitor and advise the chair and the manager of
10 any threat, emergency or disaster that may pose a risk to the lives and safety of
11 the population of Alachua County, and the protective actions the county may take
12 to safeguard life and property, which actions may include compelling the
13 evacuation of all or part of the population from the affected or threatened area
14 within the county.

15 3) Upon declaration of a state of emergency, the director or designee will serve as
16 the county coordinating officer and shall direct all activities of the emergency
17 operations center.

18 Sec. 27.10.2. - Imposition or demand of exorbitant or excessive price during shortages created
19 during declared emergencies.

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

21 a. During periods of local and state emergency, sources of fuel, medicine,
22 food, building supplies or other necessities are sometimes destroyed,
23 damaged or otherwise severely restricted in supply.

- 1 b. During periods of local and state emergency unscrupulous opportunists
2 may take advantage of the citizens of the county who require the above
3 described necessities to sustain themselves by requiring the payment of
4 excessive or unconscionable prices to provide services and various
5 commodities needed by the victims of a natural or manmade disaster.
- 6 c. The board finds it appropriate and in the interest of the health, safety and
7 welfare of the citizens of the county to protect potential victims of
8 unscrupulous pricing practices from those that would take advantage of
9 citizens needing services and commodities as a result of a natural or
10 manmade disaster.

11 2) *As used in this section:*

- 12 a. Commodity means any goods, services, materials, merchandise, supplies,
13 equipment, resources, or other article of commerce, and includes, without
14 limitation, food, water, ice, chemicals, petroleum products, and lumber
15 necessary for consumption or use as a direct result of the emergency.
- 16 b. It is prima facie evidence that a price is unconscionable if:
- 17 1. The amount charged represents a gross disparity between the price of
18 the commodity or rental or lease of any dwelling unit or self-storage
19 facility that is the subject of the offer or transaction and the average
20 price at which that commodity or dwelling unit or self-storage facility
21 was rented, leased, sold, or offered for rent or sale in the usual course
22 of business during the 30 days immediately prior to a declaration of a
23 state of emergency, unless the increase in the amount charged is
24 attributable to additional costs incurred in connection with the rental or

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

- 3 2. The amount charged grossly exceeds the average price at which the
4 same or similar commodity was readily obtainable in the trade area
5 during the 30 days immediately prior to a declaration of a state of
6 emergency, unless the increase in the amount charged is attributable to
7 additional costs incurred in connection with the rental or sale of the
8 commodity or rental or lease of any dwelling unit or self-storage
9 facility, or regional, national or international market trends.

10 3) *Prohibition against unconscionable prices.*

- 11 a. Upon a declaration of a state of emergency by the governor and/or upon
12 declaration of a state of emergency pursuant to this chapter, it is a
13 violation of this section for a person or his or her agent or employee to
14 rent or sell or offer to rent or sell at an unconscionable price within the
15 area for which the state of emergency is declared, any essential
16 commodity, including but not limited to, supplies, services, provisions or
17 equipment that is necessary for consumption or use as a direct result of
18 the emergency. This prohibition remains in effect until the direct
19 declaration expires or is terminated.
- 20 b. It is a violation of this section for any person to impose unconscionable
21 prices for the rental or lease of any dwelling unit or self-storage facility
22 during a period of declared state of emergency.
- 23 c. A price increase approved by an appropriate government agency shall not
24 be in violation of this section.

- 1 d. This section shall not apply to sales by growers, producers, or processors
2 of raw or processed food products, except for retail sales of such products
3 to the ultimate consumer within the area of the declared state of
4 emergency.
- 5 e. During a declared emergency and when there is an allegation of price
6 gouging against the person, failure to possess a business tax receipt
7 pursuant to Chapter 205, Florida Statutes, constitutes reasonable cause to
8 detain the person, provided that the detention shall only be made in a
9 reasonable manner and only for a reasonable period of time sufficient for
10 an inquiry into the circumstances surrounding the failure to possess a tax
11 receipt. During a declared emergency, this subsection does not apply to
12 religious, charitable, fraternal, civic, educational, or social organizations.

13 4) *Enforcement.*

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

23 5) *Incorporation of § 501.160, F.S., and ch. 501 et seq., Florida Deceptive and*

24 *Unfair Trade Practices Act.* All sections and provisions of § 501.160, F.S., and

1 ch. 501, part II, F.S., known as the Florida Deceptive and Unfair Trade Practices
2 Act, are hereby incorporated by reference.

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

9 ARTICLE II. - HAZARDOUS MATERIALS INCIDENT COST RECOVERY ORDINANCE

10 Sec. 27.11. - Title.

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

13 Sec. 27.12. - Intent and purpose.

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

19 Sec. 27.13. - Authority.

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

1 Sec. 27.14. - Jurisdiction.

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

4 Sec. 27.15. - Definitions.

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

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

- 9 1) All costs incurred for response, containment and/or removal and disposal of
10 hazardous materials or remedial actions to include costs associated with
11 transportation and temporary storage of hazardous materials.
- 12 2) All costs incurred for ensuring the safety of the public to include costs incurred
13 for actions taken on and off the site of the hazardous material incident.
- 14 3) Damages for injury to, destruction of, or loss of natural resources, as determined
15 by the appropriate local, state or federal agency, including the reasonable costs
16 of assessing such injury, destruction, or loss resulting from a hazardous material
17 incident.
- 18 4) Health care costs for persons or animals injured from a hazardous material
19 incident or costs of any health assessment or health effects study carried out as a
20 necessity resulting from a hazardous material incident.
- 21 5) Labor, including benefits, overtime and administrative overhead for government
22 employees.
- 23 6) The costs of operating, maintaining, leasing, repairing and replacing equipment.

- 1 7) Contract labor and equipment.
- 2 8) Labor and equipment obtained by Alachua County, Alachua County agencies or
- 3 agents, and the municipalities.
- 4 9) Materials, including but not limited to, absorbents, foams, dispersants,
- 5 neutralization agents, overpack drums or containers.
- 6 10) Supervision of cleanup and abatement.

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

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

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

23 *Municipality* means any municipality within Alachua County.

24 *Natural resources* means land, fish, wildlife, biota, air, water, ground water, drinking

1 water supplies, and other such resources belonging to, managed by, held in trust by,
2 appertaining to, or otherwise controlled by Alachua County, Alachua County agencies, and the
3 municipalities.

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

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

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

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

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

19 Sec. 27.16. - Hazardous materials incidents—Liability for costs.

20 a) *Liability for costs.* Any responsible party who causes a hazardous material
21 incident shall be liable for the payment of all reasonable and necessary
22 extraordinary and unbudgeted costs incurred by the county, county agencies or
23 agents, and the municipalities for response to and remediation of such an

1 incident.

2 b) *Remedies at law.* The county will seek all available remedies at law, to include
3 the provisions of this article, against any parties responsible for any hazardous
4 materials event, to include those actions and remedies available under the U.S.
5 Bankruptcy Code relating to such matters.

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

7 a) *Agent for collection.* The county department of finance and accounting shall
8 serve as the county's agent for collecting invoices and billing the responsible
9 party for costs in the unincorporated area. Agencies of the county and agencies
10 responding to a hazardous material incident in the unincorporated area of the
11 county according to the responsibilities set forth in the local emergency planning
12 committee hazardous material response plan or at the request of the county are
13 eligible to submit bills.

14 b) *Procedure for submitting invoices.* An invoice identifying eligible costs under
15 this article shall be submitted to the county department of finance and accounting
16 within a reasonable time after the cost was incurred or identified. Submitted
17 invoices must include sufficient documentation for cost reimbursement (i.e.
18 copies of time sheets for specific personnel, copies of bills for materials,
19 equipment and supplies procured or used, etc.). Accepting invoices from
20 agencies outside the county shall not incur liability to the county to pay costs
21 from such agencies until payment is received by the county from the responsible
22 party.

23 c) *Method of payment.* The county department of finance and administrative

1 services shall submit one or a series of consolidated invoices to the responsible
2 party identifying agencies, agents or municipalities and their specific costs or
3 reimbursements. The responsible party shall issue a certified check made payable
4 to each governmental entity that responded and submitted an invoice. The checks
5 will be sent to Alachua County within 60 days of receiving a consolidated
6 invoice.

7 Sec. 27.18. - Methods of enforcement.

8 a) *Civil action.* The county may enforce these provisions by civil action in a court
9 of competent jurisdiction for the collection of any amounts due hereunder plus
10 administrative collection costs, attorneys' fees, or for any other relief that may be
11 appropriate. A certified copy of a judgment in favor of the county may be
12 recorded in the public records and thereafter shall constitute a lien upon any real
13 or personal property owned by such person(s) and such lien shall be coequal with
14 the lien of all state, district and municipal taxes superior in dignity to all other
15 liens, titles, and claims until paid or extinguished.

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

1 Sec. 27.19. - Conflict with other laws.

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

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

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

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

21 SECTION 5. Inclusion in the Code. It is the intent of the Board of County
22 Commissioners of Alachua County, Florida, and it is hereby provided that the provisions of this
23 ordinance shall become and be made a part of the Code of Ordinances of Alachua County,

1 Florida; that the section of this ordinance may be renumbered or re-lettered to accomplish such
2 intent and that the word “ordinance” may be changed to “section”, “article”, or other appropriate
3 designation.

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

7
8 **DULY ADOPTED** in regular session, this ____ day of _____, 2020.

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

12
13 ATTEST:

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

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

APPROVED AS TO FORM

20 _____
21 County Attorney

22 (SEAL)