

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2020-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 23 OF THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED "PERSONNEL," TO INCLUDE ARTICLE III, ENTITLED "WHISTLE-BLOWER PROVISIONS," SECTIONS 23.30 THROUGH 23.34; ESTABLISHING AN ADMINISTRATIVE PROCEDURE FOR EMPLOYEES AND OTHER PERSONS TO REPORT INSTANCES OF ILLEGALITY, MISMANAGEMENT, MALFEASANCE, WASTE OR FRAUD ON THE PART OF COUNTY EMPLOYEES, AGENTS OR CONTRACTORS; PROVIDING A PROCEDURE FOR INVESTIGATING SUCH ALLEGATIONS; ACKNOWLEDGING INDEPENDENT AUTHORITY OF CLERK OF COURT TO DO SAME; PROVIDING FOR NON RETALIATION FOR PERSONS WHO REPORT SUCH INSTANCES; PROVIDING A MANNER FOR PERSONS ALLEGING RETALIATION TO SEEK REDRESS; ACKNOWLEDGING AUTHORITY OF CONSTITUTIONAL OFFICERS TO DO THE SAME; PROVIDING FOR REPEALING CLAUSE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 112.3187, Florida Statutes, entitled the "Whistle-blower's Act," provides for protections to persons who disclose information regarding illegal or malfeasant conduct on the part of government employees, agent or contractors; and

WHEREAS, the Whistle-blower Act (the "Act") provides for the establishment, by local ordinance, of an administrative procedure to permit disclosure of complaints and protect those persons making disclosure from retaliation; and,

WHEREAS, the Act provides that where a local government adopts a local ordinance establishing such administrative procedures, that the local government will have an opportunity to address complaints locally instead of proceeding directly to court; and

WHEREAS, the Board of County Commissioners of Alachua County (the, "Board") finds that it is in the County's best interest to have the first opportunity to review and address

1 allegations of illegal or malfeasant conduct by its employees, agents and contractors prior to the
2 delay and expense of court proceedings; and

3 **WHEREAS**, the County now desires to amend Chapter 23 of the Code of Ordinances to
4 establish Article III creating an administrative procedure to handle whistle-blower complaints.

5 **NOW, THEREFORE, BE IT DULY ORDAINED BY THE BOARD OF COUNTY**
6 **COMMISSIONERS OF ALACHUA COUNTY, FLORIDA:**

7 SECTION 1. Chapter 23, entitled “Personnel”, Article III, entitled “Whistle-Blower
8 Provisions,” of the Code of Alachua County, Florida is hereby amended to include the following:

9 **Sec. 23.30. Procedure for disclosing certain information.**

10 (a) The Board adopts by reference as part of this chapter, Section 112.3187, Florida
11 Statutes, as amended from time to time, including any definitions except to the extent they conflict
12 herein.

13 (b) Employees or other persons who have information concerning the following
14 categories are required to disclose that information to either the County Manager or the County
15 Attorney:

16 (1) Any violation or suspected violation of any federal, state, or local law, rule
17 or regulation committed by an employee or agent of an agency or independent contractor which
18 creates and presents a substantial and specific danger to the public’s health, safety, or welfare; or

19 (2) Any act or suspected act of gross mismanagement, malfeasance,
20 misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross
21 neglect of duty committed by an employee or agent of an agency or independent contractor.

22 (c) The information must be disclosed on the employee’s or person’s own initiative, be
23 in writing, and be signed by the employee or person making the disclosure. Alternatively, the
24 information may be disclosed to the Equal Opportunity Office directly in person, or by any other
25 reporting mechanism established by the Equal Opportunity Manager.

26 **Sec. 23-31. Procedure for investigating disclosures.**

27 (a) Once a disclosure has been made, the County Manager and County Attorney shall
28 confer to determine whether any investigation is warranted and, if so, an appropriate course of
29 investigation of the disclosure, in light of the specifics of the disclosure, the laws and regulations
30 which may apply, the complexity or sophistication of the matters involved in the disclosure,
31 whether criminal violations may be present, and any other relevant factors. Should the County
32 Manager or County Attorney be the subject of a disclosure, then the remaining un-accused official
33 shall confer with the Chair of the Board on a proper course of action, including, if necessary, the
34 use of an outside organization to conduct the investigation.

1 (b) The level of formality and documentation of any investigation of disclosures made
2 may vary depending on the nature and severity of the disclosure. In any event, the Chair and
3 members of the Board should be kept updated as appropriate on the progress of any investigation.
4 Investigations shall be completed within 90 days of disclosure. If due to the nature of the
5 disclosure or other extenuating circumstances, additional time is necessary, the County Manager
6 or County Attorney shall seek approval from the Chair.

7 (c) Once a determination has been made with respect to how any investigation will
8 proceed, such investigation will be conducted in an expeditious manner. The County Manager or
9 County Attorney, as the case may be, shall make any criminal or regulatory referrals, recommend
10 modified policies to the Board, or take any other actions which are deemed necessary as a result
11 of the investigation.

12 (d) Nothing in this ordinance shall impact any independent authority vested in the
13 Clerk of Courts.

14 **Sec. 23-32. Retaliation prohibited.**

15 The County, including any official thereof, shall neither dismiss, discipline, or take any
16 other adverse employment action against any employee, nor take any adverse action that affects
17 the rights or interests of a person, who discloses, in good faith, the information categorized in
18 Section 23.30.

19 **Sec. 23-33. Persons protected.**

20 (a) Any employee or other person who discloses information on their own initiative
21 and in the manner prescribed in Section 23.30(b), is protected from retaliation based on such
22 disclosure. Any person requested to participate in any investigation or hearing concerning a
23 disclosure is protected from retaliation based on such participation. Any person who refuses to
24 participate in any prohibited retaliatory actions is protected from retaliation for such refusal.

25 (b) Employees or other persons are not afforded any protections as noted herein where
26 such employees or persons:

27 (1) Commit or intentionally participate in committing the violation or suspected
28 violation for which protection from retaliation is being sought;

29 (2) Violate any personnel rule or policy in connection with or related to the
30 subject of the disclosure; or

31 (3) Violate any contractual or regulatory provision applicable to County contracts
32 which are the subject of or related to the disclosure.

33 (c) The provisions of this Article shall not be applicable when an employee or person
34 discloses information known by the employee or person to be false.

35 (d) Nothing herein precludes the County from taking any personnel, contractual, or
36 other action against any employee or other person which is predicated upon grounds other than,
37 and would have been taken absent, the employee's or person's disclosure of information under
38 Section 23.30.

1 (e) The provisions of this section may not be used by a person while he or she is under
2 the care, custody, or control of the state correctional system or the County's Sheriff, or after release
3 therefrom, with respect to circumstances that occurred during any period of incarceration.

4 **Sec. 23-34. Procedure for reviewing complaint of retaliation.**

5 (a) Any complaint of retaliation prohibited under Section 23.33 must be filed with the
6 Human Resources Director within 60 days after the alleged retaliatory action. Such complaint
7 must be submitted in writing, setting forth the facts which constitute the alleged retaliation. Once
8 a retaliation complaint has been received, the Human Resources Director or designee shall
9 investigate the complaint and submit a report to the County Manager and County Attorney, if
10 applicable, making findings of fact and a conclusion as to whether retaliation has occurred. A
11 copy of the report shall be provided to the person making the complaint. Should the County
12 Manager or County Attorney be the subject of the complaint, then the remaining un-accused
13 official shall receive a copy of the report.

14 (b) Should the employee or person making the complaint of retaliation not agree with
15 the report's conclusions, then the matter shall be heard by a panel of persons consisting of the
16 County Manager, the Equal Opportunity Manager, and a third Department Director chosen by
17 those two. After hearing the matter, the panel shall deliberate and render a written decision making
18 findings of fact and a conclusion as to whether prohibited retaliation has occurred. The Office of
19 the County Attorney shall provide such legal advice and support to the panel as may be required.

20 (c) If it is determined that retaliation has occurred, the County Manager, or County
21 Attorney where appropriate, shall take such actions as would remedy the effects thereof, including
22 if necessary reinstatement and payment of lost wages or profits. The County Manager is authorized
23 to promulgate any procedures, not inconsistent with these provisions, to facilitate the complaint
24 review process.

25 (d) Notwithstanding any of the foregoing, the authority of any County Constitutional
26 Officer to adopt and administer policies and procedures concerning whistle-blower complaints
27 with respect to their employees shall not be diminished by this ordinance and such Officers may
28 adopt any such policies and procedures as may be deemed necessary and appropriate.

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

31 SECTION 3. Modification. It is the intent of the Board that the provisions of this
32 ordinance may be modified as a result of considerations that may arise during public hearings.
33 Such modifications shall be incorporated into the final version of the ordinance adopted by the
34 Board and filed by the Clerk to the Board.

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

6 SECTION 5. Inclusion in the Code. It is the intent of the Board of County Commissioners
7 of Alachua County, Florida, and it is hereby provided that the provisions of this ordinance shall
8 become and be made a part of the Code of Ordinances of Alachua County, Florida; that the section
9 of this ordinance may be renumbered or re-lettered to accomplish such intent and that the word
10 “ordinance” may be changed to “section”, “article”, or other appropriate designation.

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

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

BOARD OF COUNTY COMMISSIONERS
OF ALACHUA COUNTY, FLORIDA

ATTEST:

By: _____
Robert Hutchinson, Chair

Jessie K. Irby, II
Clerk of Court

APPROVED AS TO FORM

County Attorney

(SEAL)