

ALACHUA COUNTY
BOARD OF COUNTY COMMISSIONERS

ORDINANCE NO. 2021-__

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF ALACHUA COUNTY, FLORIDA, AMENDING CHAPTER 27 OF THE ALACHUA COUNTY CODE OF ORDINANCES, ENTITLED "EMERGENCIES," IN ORDER TO BRING IT INTO COMPLIANCE WITH THE CHANGES IN FLORIDA LAW CONTAINED IN CHAPTER 2021-08, LAWS OF FLORIDA, WHICH LIMIT THE AUTHORITY OF LOCAL JURISDICTIONS; PROVIDING FOR REPEALING CLAUSE, PROVIDING FOR MODIFICATION AT PUBLIC HEARING, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the 2021 Legislative Session, the Legislature enacted Laws of Florida (LOF) 2021-08;

WHEREAS, the provisions of LOF 2021-08 made significant changes to the authority of local governments in their handling of events defined as "Public Health Emergencies";

WHEREAS, The Board of County Commissioners wishes to amend Chapter 27, Alachua County Code of Ordinances, entitled "Emergencies," to reflect these limitations.

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

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

CHAPTER 27. - EMERGENCIES

ARTICLE I. - IN GENERAL

Sec. 27.01. Definitions.

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

1. Alachua County Emergency Management means the organization created in accordance with the provisions of F.S. §§ 252.31—252.91 to discharge the emergency management responsibilities and functions of Alachua County, directed by the Emergency

1 Management Director, subject only to the direction and control of the Board acting through the
2 County Manager.

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

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

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

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

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

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

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

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

25 a) Reduction of vulnerability of people and communities of this county to
26 damage, injury, and loss of life and property resulting from natural,
27 technological, or manmade emergencies, catastrophes or hostile military or
28 paramilitary action.

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

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

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

37 e) Provision of an emergency management system embodying all aspects of
38 prevention, protection, response, recovery, and mitigation.

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

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

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

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

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

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

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

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

22 14. “Public health emergency” has that meaning set forth in Sec. 252.34 (11), Fla.
23 Stat. and means any occurrence, or threat thereof, whether natural or manmade, which results or
24 may result in substantial injury or harm to the public health from infectious disease, chemical
25 agents, nuclear agents, biological toxins, or situations involving mass casualties or natural
26 disasters, declared as a public health emergency as declared by the State Health Officer.

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

1 will be adequate to deal with, reduce vulnerability to, and to recover from emergencies, or
2 threats thereof, in order to safeguard the life and property of its citizens, to designate a county
3 official to declare states of emergency and issue orders in the event of a disaster or emergency,
4 or the imminent threat thereof, and to authorize certain actions relating thereto.

5 **Sec. 27.04. - Territorial jurisdiction.**

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

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

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

12 **Sec. 27.06. - Conflicting provisions.**

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

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

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

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

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

28 4. Declaration of general emergency. A general state of emergency may only be
29 declared by a special meeting of the Board. If, after reasonable effort, a special emergency
30 meeting cannot be convened, then a state of emergency may be proclaimed by the official
31 authority. The official authority shall be the board chair, or, in the absence of the chair, the vice-
32 chair, or, in the absence of both the chair and vice-chair, any available commissioner. In the
33 event neither the chair, nor the vice-chair, nor any other commissioner can be located, the official
34 authority shall be the county manager, or other county employee designated by the county
35 manager. Subject to the limitations set forth herein, the declaration or any subsequent order, in
36 the absence of a quorum of the Board, may authorize any of the powers set forth in Sec. 27.09.

37 5. Declaration of localized emergency. The board hereby designates the county
38 manager as the official authority during a localized county emergency, and authorizes the county
39 manager to carry out all emergency management functions required by such emergency. In the
40 event the county manager cannot be located, the official authority shall be the next available
41 assistant county manager, or the next available county officer, official or employee who has been
42 identified in the order of succession as provided herein. The duration of each localized state of

1 emergency shall be no longer than that necessary to ensure the health, safety and welfare of the
2 population, but in no event shall such declaration exceed seven days. A localized state of
3 emergency may be extended in increments of up to seven days pursuant to the procedure set
4 forth in subsection 27.07(4).

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

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

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

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

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

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

- h) Prohibit any person, firm, or corporation from using public fresh water supplies for any purpose other than cooking, drinking, or bathing.
- i) Declare certain areas off limits.
- j) Direct or compel the evacuation of all or part of the population from any affected or threatened part of the county.
- k) Take such other action as may be reasonably required under the circumstances except as otherwise specifically limited by the Board of County Commissioners.
- l) To the extent any of these actions are taken during states of emergency other than hurricanes or weather-related events, the limitations set forth in Sec. 27.10.5 apply and extensions must be issued by the Board of County Commissioners where there are limitations on the rights of individuals or businesses.

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

3. Pursuant to F.S. § 252.46(2), all executive orders and emergency rules imposed and enacted by an official authority pursuant to this article shall be reduced to writing as soon as possible, filed with the office of the clerk to the board, and concurrently posted prominently upon the premises then serving as the headquarters of county governmental operations ~~or~~ and posted on the County's webpage. Any Emergency Order issued by the Board or Official Authority must be filed with the Clerk of Court within 3 days or shall be void. Further, copies of all such executive orders and emergency rules shall be delivered, as soon as possible to representatives of the print and electronic news media and all appropriate law enforcement officers and other appropriate government administration officials.

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

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

1 6. In the event of a declared state of local emergency lasting longer than 30 days
2 where the Board has commenced meeting, the Official Authority shall report to the Board all
3 actions taken pursuant to Sec. 27.08, since the last meeting of the board, along with any
4 executive orders entered. The Board may take such action as it deems appropriate at the time.
5 Unless modified or repealed, the actions taken by the Official Authority shall stand as ratified by
6 the Board, as defined by the local state of emergency.

7 7. An order imposing a curfew restricting the travel or movement of persons during
8 designated times must nonetheless allow persons to travel during the curfew to their places of
9 employment to report for work and to return to their residences after their work has concluded.

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

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

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

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

- 26 a) Determine that a threat to public health and safety may result from the
27 generation of widespread debris throughout the county, using any of the
28 following criteria:
 - 29 1) That such debris constitutes a hazardous environment for modes
30 of movement and transportation of the residents as well as
31 emergency aid and relief services;
 - 32 2) That such debris may endanger properties in the county;
 - 33 3) An environment conducive to breeding disease and vermin;
 - 34 4) Greatly increased risk of fire; and
 - 35 5) That it is in the public interest to collect and remove disaster debris
36 from property whether public or private lands, or public or private
37 roads to eliminate any immediate threat to life, public health and
38 safety;

1 6) To reduce the threat of additional damage to improved property;
2 and

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

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

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

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

17 e) Authorize the removal of abandoned vehicles pursuant to current Statutes of
18 the State of Florida and in conjunction with law enforcement of the county
19 and state.

20 f) Authorize the temporary suspension of the enforcement of the Alachua
21 County Code, where the emergency is of such nature that immediate action
22 outside the Code is required.

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

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

27 1) Appropriate and expend funds; make contracts; obtain and distribute equipment,
28 materials, and supplies for emergency management purposes; provide for the health and safety of
29 persons and property, including emergency assistance to the victims of any emergency; and
30 direct and coordinate the development of emergency management plans and programs in
31 accordance with the policies and plans set by the federal and state emergency management
32 agencies.

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

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

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

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

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

5 7) Make provisions for availability and use of temporary emergency housing and
6 emergency warehousing of materials;

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

9 9) Enter into contracts;

10 10) Incur obligations;

11 11) Employ permanent and temporary workers;

12 12) Utilize voluntary workers;

13 13) Rent equipment;

14 14) Acquire and distribute, with or without compensation, supplies, materials, and
15 facilities;

16 15) Authorize expenditure of public funds;

17 16) Acquire merchandise, equipment, vehicles, or property needed to alleviate the
18 emergency; and

19 17) In the absence of a quorum of the board, absence of the chair, absence of the vice
20 chair and absence of any other county commissioner, the county manager may call on the
21 national guard or other law enforcement divisions, in consultation with the Alachua County
22 Sheriff, and request state and federal assistance as necessary to assist in the mitigation of the
23 emergency, or to help maintain law and order, rescue assistance, and traffic control.

24 Nothing within this section shall be construed to limit the usual powers and duties of the
25 county manager as conferred on him by the board and under Alachua County's Charter.

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

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

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

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

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

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

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

24 2) *As used in this section:*

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

1 the increase in the amount charged is attributable to additional costs
2 incurred in connection with the rental or sale of the commodity or rental or
3 lease of any dwelling unit or self-storage facility, or regional, national or
4 international market trends.

5 3) *Prohibition against unconscionable prices.*

- 6 a. Upon a declaration of a state of emergency by the governor and/or upon
7 declaration of a state of emergency pursuant to this chapter, it is a violation of
8 this section for a person or his or her agent or employee to rent or sell or offer
9 to rent or sell at an unconscionable price within the area for which the state of
10 emergency is declared, any essential commodity, including but not limited to,
11 supplies, services, provisions or equipment that is necessary for consumption
12 or use as a direct result of the emergency. This prohibition remains in effect
13 until the direct declaration expires or is terminated.
- 14 b. It is a violation of this section for any person to impose unconscionable prices
15 for the rental or lease of any dwelling unit or self-storage facility during a
16 period of declared state of emergency.
- 17 c. A price increase approved by an appropriate government agency shall not be
18 in violation of this section.
- 19 d. This section shall not apply to sales by growers, producers, or processors of
20 raw or processed food products, except for retail sales of such products to the
21 ultimate consumer within the area of the declared state of emergency.
- 22 e. During a declared emergency and when there is an allegation of price gouging
23 against the person, failure to possess a business tax receipt pursuant to
24 Chapter 205, Florida Statutes, constitutes reasonable cause to detain the
25 person, provided that the detention shall only be made in a reasonable manner
26 and only for a reasonable period of time sufficient for an inquiry into the
27 circumstances surrounding the failure to possess a tax receipt. During a
28 declared emergency, this subsection does not apply to religious, charitable,
29 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 Police
33 Departments are hereby authorized to take all necessary legal measures to
34 curtail violations of this section.
- 35 2. Any person subject to any violation of this section shall be entitled to seek
36 such relief or remedies as are provided for in chapter 501, part II, F.S., or
37 other laws of the state.
- 38 3. Nothing in this section creates a private cause of action in favor of any person
39 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 ch. 501, part II,*

F.S., known as the Florida Deceptive and Unfair Trade Practices Act, are hereby incorporated by reference.

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

Sec. 27.10.5 Limitations on authority under this Article.

- 1) As used in this section, the term “emergency order” means an order or ordinance issued or enacted as authorized under chapters 252 or 381 Fla. Stat that limits the rights or liberties of individuals or businesses within the political subdivision. **The term does not apply to orders issued in response to hurricanes or other weather-related emergencies.**
- 2) An emergency order to which this section applies must be narrowly tailored to serve a compelling public health or safety purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible.
- 3.) An emergency order to which this section applies shall automatically expire 7 days after issuance but may be extended by a majority vote of the Board of County Commissioners, as necessary, in 7 days increments for a total duration of not more than 42 days.
- 4.) Upon the expiration of such order, a substantially similar order may not be issued for the duration of the emergency.

ARTICLE II. - HAZARDOUS MATERIALS INCIDENT COST RECOVERY ORDINANCE

Sec. 27.11. - Title.

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

Sec. 27.12. - Intent and purpose.

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

Sec. 27.13. - Authority.

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

Sec. 27.14. - Jurisdiction.

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

1 **Sec. 27.15. - Definitions.**

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

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

- 6 1) All costs incurred for response, containment and/or removal and disposal of
7 hazardous materials or remedial actions to include costs associated with
8 transportation and temporary storage of hazardous materials.
- 9 2) All costs incurred for ensuring the safety of the public to include costs incurred
10 for actions taken on and off the site of the hazardous material incident.
- 11 3) Damages for injury to, destruction of, or loss of natural resources, as determined
12 by the appropriate local, state or federal agency, including the reasonable costs
13 of assessing such injury, destruction, or loss resulting from a hazardous material
14 incident.
- 15 4) Health care costs for persons or animals injured from a hazardous material
16 incident or costs of any health assessment or health effects study carried out as a
17 necessity resulting from a hazardous material incident.
- 18 5) Labor, including benefits, overtime and administrative overhead for government
19 employees.
- 20 6) The costs of operating, maintaining, leasing, repairing and replacing equipment.
- 21 7) Contract labor and equipment.
- 22 8) Labor and equipment obtained by Alachua County, Alachua County agencies or
23 agents, and the municipalities.
- 24 9) Materials, including but not limited to, absorbents, foams, dispersants,
25 neutralization agents, overpack drums or containers.
- 26 10) Supervision of cleanup and abatement.

27 *Hazardous material* means any substance material defined, listed, characterized, or
28 classified as a hazardous material, hazardous substance, hazardous waste, or toxic substance
29 according to any or all of the following: Chapter 38F-41, Florida Administrative Code (Florida
30 Substance List); Title 40 Code of Federal Regulations Part 261 (Identification and Listing of
31 Hazardous Wastes); Title 40 Code of Federal Regulations Part 302.1.4 (Designation of Hazard
32 Substances); Title 40 Code of Federal Regulations Part 355, Appendices A and B (List of
33 Extremely Hazardous Substances), and Title 49 Code of Federal Regulations Parts 172.101 and
34 172.102 (Hazardous Materials Table).

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

38 *Hazardous substance* includes any solution, mixture, or formulation containing
39 hazardous material, or any material which, due to its chemical or physical characteristics, is
40 determined by the county to pose a substantial threat to the life, health, or safety of persons or

1 property or to the environment. The term includes, but is not limited to, explosives, radioactive
2 materials, petroleum products, gases, poisons, biologic agents, flammables and corrosives.

3 *Municipality* means any municipality within Alachua County.

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

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

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

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

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

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

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

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

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

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

34 a) *Agent for collection.* The county department of finance and accounting shall
35 serve as the county's agent for collecting invoices and billing the responsible
36 party for costs in the unincorporated area. Agencies of the county and agencies
37 responding to a hazardous material incident in the unincorporated area of the
38 county according to the responsibilities set forth in the local emergency planning
39 committee hazardous material response plan or at the request of the county are
40 eligible to submit bills.

- 1 b) *Procedure for submitting invoices.* An invoice identifying eligible costs under
2 this article shall be submitted to the county department of finance and accounting
3 within a reasonable time after the cost was incurred or identified. Submitted
4 invoices must include sufficient documentation for cost reimbursement (i.e.
5 copies of time sheets for specific personnel, copies of bills for materials,
6 equipment and supplies procured or used, etc.). Accepting invoices from
7 agencies outside the county shall not incur liability to the county to pay costs
8 from such agencies until payment is received by the county from the responsible
9 party.
- 10 c) *Method of payment.* The county department of finance and administrative
11 services shall submit one or a series of consolidated invoices to the responsible
12 party identifying agencies, agents or municipalities and their specific costs or
13 reimbursements. The responsible party shall issue a certified check made payable
14 to each governmental entity that responded and submitted an invoice. The checks
15 will be sent to Alachua County within 60 days of receiving a consolidated
16 invoice.

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

- 18 a) *Civil action.* The county may enforce these provisions by civil action in a court
19 of competent jurisdiction for the collection of any amounts due hereunder plus
20 administrative collection costs, attorneys' fees, or for any other relief that may be
21 appropriate. A certified copy of a judgment in favor of the county may be
22 recorded in the public records and thereafter shall constitute a lien upon any real
23 or personal property owned by such person(s) and such lien shall be coequal with
24 the lien of all state, district and municipal taxes superior in dignity to all other
25 liens, titles, and claims until paid or extinguished.
- 26 b) *Other remedies.* This article shall not prohibit the county from pursuing any other
27 remedy, whether civil or criminal, or from instituting any appropriate action or
28 proceedings, including injunction in a court of competent jurisdiction. Nor shall
29 the recovery of expenses under this article in any way release the various parties,
30 or limit them, from legal liability incurred as a result of hazardous material
31 cleanup or abatement as defined under any local, state or federal rule or
32 regulation.

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

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

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

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

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

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

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

(SIGNATURES ON NEXT PAGE)

1 **DULY ADOPTED** in regular session, this ____ day of _____, 2021.
2

3 **BOARD OF COUNTY COMMISSIONERS OF**
4 **ALACHUA COUNTY, FLORIDA**
5

6 ATTEST:

7 BY: _____
8 Marihelen Wheeler, Chair
9 Board of County Commissioners

10 _____
11 J.K. "Jess" Irby, Esq.
12 Clerk

APPROVED AS TO FORM

13 _____
14 County Attorney
15 (SEAL)