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An emergency ordinance of the City of Gainesville, Florida, relating to penalties for violations of declarations of emergency; amending Sec. 2-67 titled “Mayor may declare state of emergency, water emergency” within Article II of Chapter 2 of the City Code of Ordinances, and amending Sec. 2-339 titled “Applicable codes and ordinances” within Division 6 of Article V of Chapter 2 of the City Code of Ordinances; providing for non-codification; providing a severability clause; providing a conflict clause; and providing an effective date and termination date.

WHEREAS, COVID-19, a respiratory illness caused by a virus that spreads rapidly from person to person and may result in serious illness or death, constitutes a clear and present threat to the lives, health, welfare, and safety of the people of the City of the State of Florida, Alachua County and the City of Gainesville; and,

WHEREAS, on March 1, 2020, Governor DeSantis declared a Public Health Emergency because of COVID-19; and, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a State of Emergency because of COVID-19; and,

WHEREAS, on March 11, 2020, the World Health Organization declared the spread of COVID-19 to be a global pandemic; and, on March 13, 2020, President Trump declared a national emergency concerning COVID-19; and,

WHEREAS, County Emergency Order 2020-01 declared a local state of emergency in Alachua County based on the COVID-19 virus on March 16, 2020; and,

WHEREAS, Subsequent County-wide Emergency Orders have been issued by Alachua County, some or all of which provide civil citation penalties for violations; and,

WHEREAS, current City Code only provides criminal penalties for violations of emergency measures; and

WHEREAS, the City desires to provide for an additional means of enforcement for violations of emergency measure by civil citation as set forth in any City or County emergency orders, directives or measures; and

WHEREAS, this ordinance is intended to be of limited duration during the declared emergency for the COVID-19 Pandemic and to (1) recognize that Alachua County has jurisdiction under state law to adopt County-wide declarations of emergency; and (2) provide for civil citation enforcement and penalties for violations of declarations of emergency; and

WHEREAS, Section 252.38(3), Florida Statutes authorizes the City to declare a state of local emergency and to waive the procedures and formalities otherwise required of political subdivisions by law; and

1 **WHEREAS**, Section 166.041(3)(b), Florida Statutes permits the City to, by a 2/3 vote of
2 the City Commission, to enact an emergency ordinance without complying with the noticing and
3 hearing requirements of Section 166.041(3)(a), Florida Statutes; and
4

5 **WHEREAS**, until such time as the City can adopt a regular, noticed ordinance on this
6 same subject matter, the City desires to enact this emergency ordinance to allow the City to
7 enforce City or County Declarations of Emergency by civil citation, in addition to or in lieu of
8 criminal penalties.
9

10 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE**
11 **CITY OF GAINESVILLE, FLORIDA:**

12 **Section 1.** Sec. 2-67 of the Code of Ordinances of Gainesville, Florida is hereby
13 amended to read as follows:

14 **Sec. 2-67. – Mayor may declare state of emergency, county may declare county-wide state**
15 **of emergency, water emergency, penalties.**

16 (a) *State of emergency.* The mayor, or mayor pro-tem if the mayor is unavailable, may declare
17 a state of emergency within the City of Gainesville pursuant to authority granted in section
18 2.08 of the Charter Laws of the City of Gainesville, F.S. §870.042 and F.S. §252.38, and
19 exercise the powers granted therein. In addition, Alachua County may declare a state of
20 emergency within the entire geographical area of the county pursuant to the authority
21 granted in Sections 27.04 and 27.07 of the Alachua County Code of Ordinances and F.S.
22 §252.38(1).

23 (b) *Water emergency.*

24 (1) *Declaration of water emergency.* Upon the recommendation of the general manager for
25 utilities or his/her designee, the mayor may declare a water emergency, and in
26 consultation with the general manager, impose water use restrictions up to and
27 including water rationing by the city's water utility and the prohibition of any and all

1 uses as may be nonessential and make such other orders relating to the potable water
2 supply as may be necessary to protect the public health, safety and welfare.

3 (2) *Definitions of nonessential water use.* For purposes of this section, nonessential water
4 uses include those uses that are deemed by the mayor as not essential for the
5 preservation of public health and safety. The term “nonessential uses” may include but
6 is not limited to water used for the irrigation of vegetation.

7 (3) *Special relief.* Any order issued under authority of this section shall include a provision
8 whereunder consumers who believe they will suffer undue hardship or believe their
9 health and/or safety is jeopardized under the provisions of the order may request that
10 the general manager for utilities or his/her designee grant special, administrative relief
11 §from the water use restrictions and be afforded an opportunity to be heard on such
12 request.

13 (4) *Enforcement.* Enforcement of the provisions of orders issued under the authority of this
14 section shall be as provided under sections 2-336 through 2-339 of this Code. In
15 addition to the foregoing, the general manager for utilities or his/her designee is
16 authorized to discontinue water service to any consumer as necessary to enforce such
17 orders. The general manager shall adopt rules regarding such discontinuance to afford
18 the consumer notice and an opportunity to be heard.

19 (5) *Penalties.* Penalties for violation of orders issued under the authority of this section
20 shall be as provided under chapter 2, article V, division 6 of the Code.

21 (c) *Penalties.* Except as provided in subsection (b)(5) above:

(1) Any violation of a provision of any emergency measure established pursuant to F.S.

§870.043 shall be misdemeanor of the first degree, punishable as provided in F.S.

§775.082 or §775.083.

(2) Any violation of a provision of any emergency measure established pursuant to F.S.

§252.38 by the City or Alachua County may be enforced by civil citation if specifically

set forth in the emergency order or measure, or by criminal penalties pursuant to F.S. §

252.50. Each violation shall be considered a separate offense, which can be prosecuted

separately. shall be a misdemeanor of the second degree, punishable as provided in F.S.

§775.082 or §775.083.

Section 2. Sec. 2-339 of the Code of Ordinances of Gainesville, Florida is hereby amended to add a violation as set for the below. Except as amended herein, the remainder of Sec. 2-339 remains in full force and effect.

Sec. 2-339. – *Applicable codes and ordinances.*

The following ordinances are enforceable by the procedures described in this division:

Section	Description	Class	Penalty
<u>2-67(a)</u>	<u>Declaration of State of Emergency by City or County</u>	<u>As set forth in the emergency declaration, order or other measure</u>	<u>As set forth in the emergency declaration, order or other measure</u>

Section 3. Given the temporary nature and effect of this Ordinance, it is the intent of the City Commission that this Ordinance will not be codified.

Section 4. 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 will not affect the other provisions or application of the ordinance which can be given

1 effect without the invalid or unconstitutional provisions or application, and to this end the
2 provisions of this ordinance are declared severable.

3 **Section 5.** In the event of conflict or conflicts between this Ordinance an any other
4 ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable
5 under the law.

6 **Section 6.** This ordinance will become effective immediately and will stay in effect (1)
7 until the expiration or termination of the COVID-19 Pandemic Emergency Orders issued by
8 State, Alachua County or City of Gainesville officials, or (2) until adoption of a regular, noticed
9 City ordinance concerning this same subject matter, whichever first occurs.

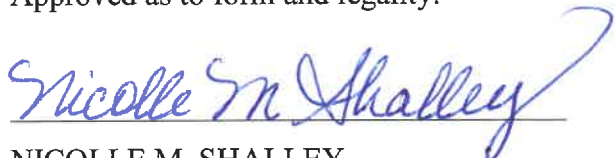
10 **PASSED AND ADOPTED** this 21 day of May, 2020.

11 
12 _____
13 LAUREN POE, MAYOR

14
15
16 Attest:

17 
18 _____
19 OMICHELE D. GAINERY,
20 CLERK OF COMMISSION

Approved as to form and legality:

21 
22 _____
23 NICOLLE M. SHALLEY
24 CITY ATTORNEY

25 This ordinance passed on first reading this 21 day of May, 2020.

~~This ordinance passed on second reading this _____ day of _____, 2020.~~