

DRAFT CHARTER AMENDMENT
(Rev 10/2/2019 J. Fauth/CBS revised)

Text of the Amendment:

Sec. 704.1 The Right to Clean Water and Enforcement

A. Definitions

Except as otherwise specifically provided herein, the following terms shall have the following meanings when used in this section:

“Clean Water” shall mean water that does not exceed Florida’s Numeric Nutrient Criteria and which is of sufficient quality to protect recreation, fish consumption, and the maintenance of a healthy, well-balanced ecosystem of plants, animals and other wild life.

“Constructed Wetland” shall mean an artificial wetland that uses natural processes involving wetland vegetation, soils, and their associated microbial assemblages to treat domestic wastewater, industrial wastewater, greywater or stormwater runoff, to improve water quality.

~~“Guardian” shall mean any citizen of Orange County who asserts a legal action under this Section on behalf of and in protection of any Waters.~~

“Domestic Wastewater” shall mean wastewater derived principally from dwellings, business buildings, and institutions.

“Greywater” shall mean domestic wastewater composed of wash water from kitchen, bathroom, and laundry sinks, tubs, and washers, but not from any sources exposed to fecal contamination, including toilets and diaper washing.

“Industrial Wastewater” shall mean the process and non-process wastewater from manufacturing, commercial, mining, and silvicultural facilities or activities, and all other wastewater not otherwise defined as domestic wastewater.

“Pollutant” or “Pollutants” shall mean any substances, contaminants, noise, or manmade or human-induced source or cause of Pollution.

“Pollute” shall mean the act of causing or contributing to Pollution.

“Pollution” shall mean the presence in the outdoor atmosphere or Waters of Orange County of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities above historic background levels, or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

“Rehydrate” shall mean to receive net inputs of water characteristic of the Water’s hydrological cycle including the timing, quantity and quality of clean water. Periodic drying is an essential component of the hydrologic cycle of intermittent streams and seasonal wetlands, and shall be maintained.

“Restore” and “Restored” shall mean to recover a self-sustaining natural ecological system, including, ~~to the extent practical,~~ its **historic hydrology and ecological communities**.

“Stormwater Runoff” shall mean water generated from precipitation events that flow over land or impervious surfaces, such as paved streets, parking lots and building rooftops, and does not soak into the ground.

“Thrive” shall mean to grow and to flourish; to support self-sustaining, healthy populations of native species that are characteristic of the Waters.

“Waters” shall include, but are not be limited to, lakes, ponds, rivers, streams, springs, wetlands, impoundments, and all other waters or bodies of water, including fresh, brackish, surface or underground waters. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether manmade or natural.

B. *Rights of People and Orange County Waters*

1. The citizens of Orange County have the right to Clean Water and a healthy environment.

2. The Wekiva River, Econlockhatchee River, and all other Waters as defined herein in Orange County have the right to exist, thrive, rehydrate, and to be Restored.

3. The rights of people and Waters secured by this section shall include the right to be free from practices or activities of governmental or non-natural persons that interfere with those rights.

4. Notwithstanding the above provisions, because wetlands built to treat Domestic or Industrial Wastewater, Greywater or Stormwater Runoff are designed to remove Pollution and Pollutants, Orange County may exempt by ordinance any such Constructed Wetland from the rights secured by this section.

5. Any citizen of Orange County, individually or as a or -on behalf of and in protection guardian of the Wwaters, ~~–~~ may maintain an action in a court of competent jurisdiction for injunctive and equitable relief against:

- a. The County to compel the County to enforce this section and/or the County’s other ordinances, laws, rules or regulations for the protection of its Waters; or

- b. Any non-natural person or other entity to enjoin such non-natural persons or entities from violating this section and/or the County's other ordinances, laws, rules or regulations for the protection of its Waters.

~~6. Any action for injunctive relief brought by a citizen under this section against an alleged violator other than the County shall be brought in the name of the citizen and on behalf of the County as the real party in interest, and shall be subject to the following conditions:~~

- ~~a. The complaining party shall comply with the Pre-Suit Notice requirements described in subpart D of this section. As discussed therein, the County shall be provided with a pre-suit opportunity to take control of the claim as the real party in interest over that portion of any suit seeking injunctive relief under this section.~~
- ~~b. If the County elects not to proceed with the action as the real party in interest and the complaining party elects to file the action, the County may subsequently seek leave to intervene as the real party interest.~~
- ~~c. If the Waters at issue lie within the boundaries or jurisdiction of a municipality or a federal, state, special district or other governmental agency, then the complaining party shall also provide all such agencies with Pre-Suit notification, as provided below, at least 180 days prior to instituting the action.~~
- ~~d. If the County elects to proceed as the real party in interest at any time prior to suit being filed or upon subsequent order of the court, then it shall have primary responsibility over any action filed under this section. The complaining party may be allowed to continue as an interested party in the discretion of the court, but the County shall have the right to control the litigation.~~

~~C. Enforcement and Implementation~~

~~1. Orange County shall defend and enforce the provisions of this section under its Constitutional duty to protect the health, safety and welfare of its citizens.~~

~~2. Orange County shall not issue or enter into any permit, license, contract, or any other agreement that Pollutes or contributes toward Polluting Orange County Waters.~~

~~D. Mandatory Pre-Suit Notice and Opportunity to Cure~~

~~1. At least 180 days prior to filing suit for a violation of any of the rights granted by this section, the complaining party shall notify the alleged violator of the complainant's intent to initiate litigation. The notice shall contain a copy of the proposed complaint to be filed, including all attachments thereto and the material evidence, or a description thereof, the complaining party has in its possession, custody or control. This Pre-Suit Notice requirement applies to all complaining parties, including the County.~~

~~2. The Pre-Suit Notice shall be served on the alleged violator in the same manner as provided for service of a complaint on the alleged violator under Chapter 48, Florida Statutes.~~

~~3. If the County is neither the alleged violator nor the complaining party, the complaining party shall provide Pre-Suit Notice to both the alleged violator and the County.~~

~~4. If the Waters at issue lie within the boundaries and jurisdiction of a municipality or a federal, state, special district or other governmental agency, then the complaining party shall also provide all such agencies with Pre-Suit Notice in the manner provided by general law for service of a complaint at least 180 days prior to instituting the action.~~

~~5. After service of the Pre-Suit Notice and during the 180-day period before suit may be filed:~~

~~a. The alleged violator shall conduct a good faith review to determine (1) whether the factual allegations in the notice are true, (2) whether the facts as alleged amount to a violation of this section, and (3) if the alleged violator finds that a violation occurred, what actions, if any, are available to the alleged violator to cure the violation and any attendant damage to Orange County Waters.~~

~~b. After completing its review, the alleged violator may (1) take corrective action to cure the alleged violations; (2) issue a written denial of the allegations; (3) voluntarily enter into good faith settlement negotiations with the complainant, the County, and/or any other governmental agency having jurisdiction over the Waters at issue in the complaint; or (4) take no action. If the alleged violator is the County, it shall issue a written response to the complainant explaining its choice of action.~~

~~c. If the parties enter into settlement negotiations during the 180-day pre-suit period and those negotiations are not at an impasse by the end of the 180-day period, the complainant and/or County shall not file a lawsuit seeking to enforce this section for an additional 90-day period.~~

~~d. As soon as practicable after receiving the Pre-Suit Notice, but before 180-day Pre-Suit Notification period expires, where the County is neither the alleged violator nor the complaining party, the County shall determine, by vote of the Board of County Commissioners, to do one of the following:~~

~~i. Inform the complaining party and the alleged violator in writing that the County shall proceed with the action as the real party in interest; or~~

~~ii. Notify the complaining party and the alleged violator in writing that it declines to take over the action, in which case the complaining party shall have the right to proceed.~~

~~6. Complying with the pre-suit notice provisions of subpart D is a condition precedent to filing suit and must be pled with particularity.~~

CE. Implementation

1. Orange County shall defend and enforce the provisions of this section under its Constitutional duty to protect the health, safety and welfare of its citizens.

2. Orange County shall not issue or enter into any permit, license, contract or any other agreement that Pollutes or contributes toward Polluting Orange County Waters.

Effective Date

This amendment to the Orange County Charter shall become effective immediately upon passage and shall not require any further enabling legislation by the County.