

Draft Charter Amendment (Chair Stoccardo 1-2-2020)

Text Revisions: Article 7 of the Orange County Charter is amended by adding Section 704.1. (Underline text is added to the charter).

Section 704.1 – Right to Clean Water.

A. Rights of Ecosystems and People

(1) The Wekiva River, Econlockhatchee River, and all other waters of Orange County possess rights, including but not limited to, rights to naturally exist, flourish, regenerate, evolve, rehydrate and restoration; the right to carry out their natural function; the right to abundant, clean water, the right to natural groundwater recharge and surface water recharge; the right to natural water flow; the right to a healthy, natural, biodiverse environment; and the right to be free of activities or practices, as well as obstructions, that interfere with or infringe upon these rights. The rights of the ecosystem secured in this system shall not be interpreted to confer liabilities, duties, obligations, or responsibilities on these ecosystems.

(2) The citizens of Orange County possess the right to clean water, and a healthy environment and the right to be free of activities or practices that interfere with or infringe upon this right.

B. Standing, Private Right of Action.

(1) Orange County, municipalities within Orange County, any other public agency within Orange County, and all Citizens of Orange County shall have standing to bring an action in their own name or in the name of the Waters as a real party in interest to enforce the provisions of this Section of the Charter. Such actions shall be filed in the Ninth Judicial Circuit Court in and for Orange County, Florida, or, where jurisdiction exists, in the United States District Court, Middle District of Florida, Orlando Division.

C. Violations.

It shall be unlawful and a violation of this Section of the Charter for any governmental agency, non-natural person or corporate entity to intentionally or negligently pollute the Wekiva River and Econlockhatchee Rivers within the boundaries of Orange County, or any other Waters within the boundaries of Orange County. **Violations include the Pollution of Waters which exist exclusively on private property owned by the same person(s) or entity, but only where Pollution thereon interferes with or causes Pollution of other Waters within Orange County or unreasonably interferes with or is injurious to the health and welfare of others.** This Section of the Charter applies only to violations that occur after the effective date of the amendment as provided in Subsection (I).

D. 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.

E. Remedies.

(1) Remedies for violations of this Section of the Charter shall be injunctive and/or other equitable relief, including but not limited to a writ of mandamus requiring the violator, to the greatest extent reasonably possible, to restore the Waters at issue to the condition as it existed prior to being polluted by the violator. The prevailing party shall be entitled to recover its reasonable costs, including costs of expert witnesses.

F. Exception.

The provisions of the Section shall not apply to Constructed Wetlands.

G. Definitions.

1. “Citizen” or “Citizen of Orange County” means a resident of Orange County with legal residence in the United States.
2. “Clean Water” shall mean water that meets all local, state, and federal water quality standards, 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 wildlife.
3. “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.
4. “Domestic Wastewater” shall mean wastewater derived principally from dwellings, business buildings, and institutions.
5. “Evolve” shall mean the capacity to naturally change and adopt, over time, to shift size and shape, and to perform expanded or different ecosystem functions.
6. “Flourish” shall mean the ability to robustly perform basic ecosystem functions.
7. “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.
8. “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.
9. “Pollutant” or “Pollutants” shall mean any substances, contaminants, noise, or manmade or human-induced source or cause of Pollution.
10. “Pollute” shall mean the act of causing or contributing to Pollution.
11. “Pollution” shall mean the presence in the Waters of Orange County of any substances, contaminants, noise, or manmade or human-induced impairment of waters or alteration of the

chemical, physical, biological, or radiological integrity of water in quantities above historic background levels, or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

12. “Regenerate” shall mean the ability to maintain a level of health and well-being that enables an ecosystem to respond to naturally occurring harm or damage by undergoing a process of repair and recovery over time, without human intervention.
13. “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.
14. “Restoration” shall mean the right to be restored to the state in which an ecosystem existed prior to the damage caused by activities which violate the rights secured by this section.
15. “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.
16. “Thrive” shall mean to grow and to flourish; to support self-sustaining, healthy populations of native species that are characteristic of the Waters.
17. “Waters” shall include, but are not 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.

H. Severability and Conflicts.

The rights and violations provided herein should be interpreted, to the greatest extent possible, in harmony with any superior state or federal law governing the same rights and conduct. Orange County reserves the right to protect the health, safety and welfare of its citizens. To the extent any provision of this Section of the Charter impermissibly conflicts with any superior state or federal law governing the same conduct, such provision shall be severable and all other provisions shall remain fully enforceable.

I. Effective Date.

This amendment shall become effective upon passage, which is the date certified by the Supervisor of Elections and shall not require further enabling legislation by the Orange County Board of County Commissioners.