

## A PROPOSED CITY OF MIAMI CLEAN WATER PROTECTION ORDINANCE

### **A PROPOSED ORDINANCE OF THE CITY OF MIAMI, OKLAHOMA, PROVIDING FOR THE RIGHTS OF THE RESIDENTS OF MIAMI TO CLEAN WATER; PROVIDING FOR THE RIGHTS OF TAR CREEK; PROHIBITING ACTIVITIES WHICH VIOLATE THOSE RIGHTS AND PROVIDING FOR ENFORCEMENT OF THOSE RIGHTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

Be it ordained by the People of the City of Miami as follows:

#### **A. Rights of the People of the City of Miami**

The people of the City of Miami possess the right to clean water, which shall include the right to a healthy Tar Creek that is free from pollution, and the right to be free from activities or projects which violate that right.

#### **B. Rights of Tar Creek**

Tar Creek possesses the rights to exist, regenerate, and flourish, which shall include the right to naturally recharge, the right to flow, the right to water quality necessary to provide habitat for native plants and animals, the right to provide clean water, the right to be free from pollution, and the right to restoration. Tar Creek shall also have the right to be free from activities or projects which violate those rights. The rights of the Creek secured within this Ordinance shall not be interpreted to confer liabilities, duties, obligations, or responsibilities on the Creek.

#### **C. Prohibitions**

- 1) In addition to other public nuisances declared by other sections of this Code or law, it shall be unlawful for any person to cause pollution of Tar Creek or to place or cause to be placed any wastes in a location where they are likely to cause pollution of Tar Creek. Any such action is hereby declared to be a public nuisance.
- 2) In addition to other public nuisances declared by other sections of this Code or law, it shall be unlawful for any person to perform any act that interferes with the rights recognized by this Ordinance. Any such action is hereby declared to be a public nuisance.
- 3) Any person that violates this ordinance shall be guilty of a misdemeanor. Each and every day that a violation is allowed to exist shall be deemed a separate offense.

#### **D. Implementation and Enforcement**

**(1) Whole-of-Government Implementation by the City of Miami.** The City of Miami shall take all necessary actions to implement, defend, and enforce the provisions of this Ordinance.

**(2) Enforcement.** Violations of this Ordinance may be prosecuted in the Municipal Court of the City of Miami and as otherwise allowed by law.

**(3) Penalties and Fees.** Conviction of any offense herein shall be punishable per violation by:

- (a)** a fine not to exceed seven hundred-fifty dollars (\$750); and
- (b)** restitution to the victim pursuant to Code section 1-5(g); and

1. For purposes of this Ordinance Tar Creek, having been granted legal rights which may be violated, is and for all legal purposes shall be the victim with regard to any violation of this Ordinance.
2. Restitution shall be measured by the cost of fully restoring the Creek to its previously-existing state before the violation. Because the Creek is heavily impaired, restitution shall not be measured by restoration of the Creek to a natural, contaminant-free state unless and until such a state becomes the pre-existing state of any violation. Restitution shall be

paid to the City of Miami to be used exclusively for the full and complete restoration of the Creek as affected by the violation.

- (c) court costs and fees pursuant to Code section 1-5(f); and
- (d) injunctive and equitable relief pursuant to Code section 1-5(i).

**E. Authority.** This Ordinance is adopted under the authority of the Charter of the City of Miami, pursuant to the authority provided to home rule municipalities as recognized by the Oklahoma Constitution and implementing statutes, and by the inherent right of the people of the City of Miami to make laws which recognize and expand criminal liability and environmental rights at the municipal level, under the authority of Article II, Section 1, and Article II, Section 33 of the current Oklahoma Constitution.

**F. Severability.** If any phrase, clause, sentence, paragraph, section or subsection of this Ordinance shall be declared unconstitutional or illegal by a court of competent jurisdiction, such unconstitutionality or illegality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, sections, or subsections of this Ordinance.

**G. Effective Date.** This Ordinance shall take effect thirty (30) days after its final passage by the electors of the City of Miami.

**H. Definitions.**

- (1) "Clean Water" means water free from pollution and the non-natural presence of any one or more substances, contaminants, noise, or pollutants in quantities which are, or may be potentially harmful or injurious to, human health or welfare, animals, fish, plant life, and water quality, or which may create a public nuisance or unreasonably interfere with the enjoyment of life or property, including outdoor recreation.
- (2) "Exist" as used within this Ordinance, shall mean that Tar Creek has the capacity to naturally perform basic functions historically common to the Creek.
- (3) "Flourish" as used within this Ordinance, shall mean that Tar Creek has the capacity to naturally prosper by vigorously growing and developing, which, in turn, allows it to robustly perform its basic functions.
- (4) "Person" as used within this Ordinance, shall mean an individual, association, partnership, firm, company, public trust, corporation, joint-stock company, trust, estate, municipality, state or federal agency, other governmental entity, any other legal entity or an agent, employee, representative, assignee or successor thereof.
- (5) "Pollution" as used within this Ordinance, shall mean the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property.
- (6) "Regenerate" as used within this Ordinance, shall mean that Tar Creek has the capacity to regain its historically basic functions following a natural or manmade interference with those functions.
- (7) "Tar Creek" as used within this Ordinance, shall include the Tar Creek ecosystem, which shall include, but not be limited to, tributaries of the Creek, and the Tar Creek watershed.

**APPROVED** by the people of The City of Miami, Oklahoma  
on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.