

**Town of McClellanville Zoning and Land Development Ordinance**

**Article VI Tree Conservation Amendments**

**Planning Commission Draft 3/8/21**

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**Article VI: Tree Conservation**

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**Section 6.0** **Purpose and Intent**

(a) Trees are an essential natural resource, an invaluable economic resource, and a priceless aesthetic resource. Trees play a critical role in purifying air and water, providing wildlife habitat, managing the natural drainage of storm water and controlling sediment erosion. They also help conserve energy by providing ambient cooling and mitigating the effects of externalities such as noise and glare. Trees promote commerce and tourism by buffering different land uses and beautifying the landscape, which protects and enhances property values.

(b) Trees enhance the Town of McClellanville’s quality of life as a sacred and inseparable part of its historical legacy. Consequently, McClellanville intends to exercise its authority under SC Code §6-29-720 to enhance the health, safety and welfare of its citizens with comprehensive regulations designed to conserve trees. Specifically, these provisions seek to maximize the functional benefits of trees by maintaining the Town’s existing tree canopy cover, while maintaining and improving community character. The standards contained herein are further intended to provide direction and support for the management of trees, on public and private land, within the Town of McClellanville.

**Section 6.1** **Applicability**

The provisions of this chapter in their entirety shall apply to activities conducted on all real property, public or private, within the Town of McClellanville, with the exception of commercial timber harvesting and bona fide agricultural operations with agricultural land use classification assignments by the Charleston County tax assessor.

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#### **Section 6.2 Administration**

The Zoning Administrator or his/her designee shall be responsible for the administration of all provisions of this Article and for public tree management. Town Administration shall be assisted in his/her administration of these regulations by a Tree Committee appointed in accord with the provisions of Section 12.5 of this Ordinance.

#### **Section 6.3 Definitions**

(a) Certified Arborist. An individual who has passed the International Society of Arboriculture's Certified Arborist examination, is designated as a Certified Arborist by said organization, and maintains such designation through attending at least 30 hours of qualifying continuing education within each three-year certification period.

(b) Historic Trees. Trees found to be "contributing" to the current National Register Historic District. The Scotia Street Oak Trees and the Baker Street Oak Trees are found as "contributing" to the Town's current National Register Historic District for their symbolism of the town's cultural and economic heritage. The trees along Oak and Pinckney Streets are also deemed to be of historic value to the community's character. Historic Trees shall also be categorized as Grand Trees under the provisions of this ordinance.

(c) Grand Trees. Trees, having a circumference equal to or greater than 76 inches (CBH) or 24 inches (DBH) as measured at 4.5 feet from ground level.

(d) Significant Trees. Trees, excluding pines, having a circumference equal to or greater than 25 inches (CBH) or 8 inches (DBH) as measured at 4.5 feet from ground level.

(e) Public Trees. All trees growing on property within the Town of McClellanville owned or maintained by the Town including, but not limited to, street rights-of-ways and parks.

(f) Tree Removal/Damage. Tree Removal/Damage includes actual tree removal and/or damage intentionally inflicted to the root system of a tree; by application of toxic substances; damage due to land disturbance activities; e.g. by machinery, girdling, storage of materials and soil compaction, changing the natural grade above or below the root system or around the trunk; by damage inflicted on the tree permitting fungus infection or pest infestation; by excessive pruning, thinning, topping or limbing up; and by paving with concrete, asphalt or other impervious material within such proximity as to be harmful to the tree; or any act of malicious damage to a tree.

(g) Topping. The reduction of the crown of a tree to a uniform height. Removal of more than one-third (1/3) of the crown of a tree shall be considered excessive.

(h) Limbing up. The removal of low branches of a tree for views or access. Removal of low branches higher than one-third the height of a tree shall be considered excessive. Pruning or thinning that exceeds more than 25% of the leaf surface on both the lateral branch and the overall foliage of a mature tree that is pruned within a growing season shall be considered "excessive".

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- (i) Caliper. Caliper is the diameter of a tree four (4) inches or less in diameter as measured at six (6) inches above ground. Trees less than 12.5" in circumference should be measured by caliper.
- (j) Circumference at Breast Height (CBH). Circumference at Breast Height refers to the measurement of trees greater than 12.5" in circumference, as measured at 4.5 feet above existing grade (at the base of the tree). In calculating CBH, the circumference of the tree shall be measured with a standard diameter tape. If a tree trunk splits at ground level and does not share a common base, then each trunk shall be measured as a separate tree. If a multi-trunk tree is split below the 4.5-foot mark, all trunks shall be measured separately and counted as one tree.
- (k) Diameter at Breast Height (DBH). Diameter at Breast Height refers to the measurement of trees greater than 4 inches in diameter, as measured at 4.5 feet above existing grade (at the base of the tree). In calculating DBH, the diameter of the tree shall be measured with a diameter or D-tape. If a tree trunk splits at ground level and does not share a common base, then each trunk shall be measured as a separate tree. If a multi-trunk is split below the 4.5-foot mark, all trunks **of at least six (6) inches DBH** shall be measured separately and cumulatively counted as one tree.
- (l) Critical Root Zone. A more or less circular area on the ground equivalent to the area within the tree's dripline, or a circle around the trunk with a radius equivalent to 1.50 feet for every **1.0 inch of DBH or 3.14 inches CBH**, whichever is greater. **For multi-stem trees, the critical root zone shall be calculated by applying the required radius to a cumulative total of all stems six (6) inches or greater.**
- (m) Crown. The upper portion of a tree that contains the large scaffold limbs, branches, twigs, and leaves.
- (n) Dripline. An imaginary vertical line that extends downward from the outermost extent of the branches of a tree to the ground, encircling the shaded area below a tree's canopy which is protected from dripping rainwater.
- (o) Hazard Tree. A tree at risk for failure, either whole or in part, with the part large enough to cause damage to people, buildings, vehicles or hardscape within the falling distance of the tree or part thereof.
- (p) Maintenance. Routine, periodic, or occasional activities directed at maintaining or improving a tree's health and condition, including but not limited to, mulching, pruning, irrigation, fertilization, pest control, cabling and bracing, and lightning protection system installation.
- (q) Protection. The active or passive protection of a tree's roots, trunk and crown for the purpose of avoiding damage thereto and maintaining tree health and structural integrity.
- (r) Tree Value – Appraised. The value of a tree calculated by a Certified Arborist, or person trained by the International Society of Arboriculture (ISA), based on the current edition of the Guide for Plant Appraisal developed by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture (ISA).
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#### **Section 6.4** Conservation Required

(a) No person, firm, agency, organization, society, association or corporation, or any agent or representative thereof, shall directly or indirectly destroy or remove any significant, grand, historic or public tree, except as authorized under the provisions of this chapter.

(b) All Historic or Grand trees within the Town of McClellanville shall be conserved and may not be removed from a lot except as provided for in Section 6.8 below.

(c) No public tree shall be damaged, destroyed, removed, or otherwise harmed without a tree removal permit as required in §6.5 below.

(d) All Significant trees (any tree above 8 inches DBH or 25 inches CBH) on any lot, with the exception of Pines, Sweet Gums, Chinese Tallows, and Hackberries and those documented in areas of the lot to be developed with necessary driveways, roads, easements and structures permitted by and constructed in accord with applicable ordinances of the Town, shall be conserved. Significant tree removal may be permitted for the installation of infrastructure provided it is demonstrated that no alternative location for such infrastructure is suitable.

(e) The platting of lots and roadways where a Grand Tree will be located at or near the center of the lot or roadway shall be prohibited to ensure its conservation unless the recorded plat contains a note that states that the tree shall not be removed nor a variance sought or granted for site development to accommodate ~~conservation-removal~~ of the tree.

~~(e)~~(f) In the event that trees are being removed from a site, a sufficient number of Significant and Grand Trees shall be conserved or installed to ensure each lot contains a minimum of twenty (20) such trees per acre or a combined density of trees equal to or greater than the cumulative density of trees existing prior to removal activity, whichever is less. Wetlands and required easements, such as drainage ditches, shall be subtracted from the area used to calculate tree preservation requirements. Trees within wetland areas on a lot may be used to fulfill these requirements.

(g) All trees, including those less than 8 inches DBH or 25 inches CBH planted or installed as a requirement of this section shall be conserved.

~~(f)~~(h) Any tree planted as a requirement for compliance with this section must be maintained alive and thriving for a period of no less than two (2) years. If said tree dies or is in poor health within the two-year period, it must be replaced by the owner.

#### **Section 6.5** Tree Removal Approvals

A permit for the removal of any significant and grand trees, as defined Section 6.3, is required from the Town of McClellanville.

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(a) Except for uses specifically exempt, it shall be unlawful to remove, excessively prune, excessively limb up, excessively top, or otherwise destroy or remove any public or private significant tree, as defined in §6.3(f) without first obtaining a Tree Removal Permit from the Zoning Administrator.

(b) With the exception of bush hogging or removal of trees less than 25" CBH or 8" DBH, No site clearing, ~~with the exception of bush hogging or removal of trees less than 25" CBH or 8" DBH,~~ filling, grading, materials delivery or construction shall be initiated on any lot prior to issuance of a Tree Removal Permit by the Zoning Administrator.

(c) The removal of trees shall be the responsibility of a property owner, whether public or private.

(d) Permits for the removal of Significant Trees must be applied for, accompanied by a ~~tree plan as required by Section 6.4(a). Permit applications shall be accompanied by a~~ Tree Conservation and Replacement Plan as required by subsection (e) below. The Zoning Administrator shall issue a Tree Removal Permit, valid for six (6) months, if the proposal meets the criteria for tree removal below:

- (1) The provisions of this chapter, particularly §6.4, do not require the conservation of trees proposed for removal.
- (2) Trees proposed for removal have been deemed by a certified arborist or the Zoning Administrator to be hazardous to surrounding trees, crops, permanent structures, public utilities, rights of way, or persons due to a loss of stability caused by high wind, unstable soils, age or other natural forces.
- (3) Trees proposed for removal have been certified as diseased to the extent that there is a severe decline in the tree's structural integrity or it is in a state of irreversible decline by a registered forester or certified arborist.
- (4) Trees, or the root systems thereof, proposed for removal are causing visible damage to permanent structures that is unpreventable.
- (5) Trees proposed for removal are causing damage to utility lines that cannot be prevented through proper pruning or prevent essential grade changes or all reasonable utility installations.

(e) Tree Conservation and Replacement Plans, superimposed on a site development plan or plat for subdivisions creating three or more lots, \*\* shall include the location, number, size (CBH or DBH), and species with a scaled graphic representation of each Grand and Significant Tree, canopy size, and trunk location. (For example, a tree with 37" CBH would be illustrated showing 12' radius of canopy). Such plans shall identify the location, number, size and species of all trees to be conserved in accord with this ordinance and those proposed for removal (including dead and diseased trees). Trees located within five (5) feet of other trees, and those located in wetland areas, may be designated in groups, with the predominant species, estimated number and average CBH indicated.

\*\* Note – this requirement is recommended to be included also within Article X – submission requirements for subdivision and site development plans.

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(f) Public Tree Removal. A permit is required for any person, except for Town staff and those acting at the request or direction of the Town, to remove a public tree. Such permit must be applied for no less than ten (10) days in advance of a regularly scheduled Tree Committee meeting. The Tree Committee shall notify the jurisdiction owning the tree and rule on the application using the criteria for tree removal in subsection (d) and such other criteria as it deems relevant. If granted, the Zoning Administrator shall issue a Tree Removal Permit, valid for six (6) months.

(g) The Town Administrator shall notify the Tree Committee of the Town's intent to remove a grand tree located on public property no less than ten (10) days in advance of a regularly scheduled Committee meeting.

(h) In cases where a person or entity proposes removal of a public tree, the applicant or entity shall submit a report detailing the results of an inspection and recommended maintenance by a Certified Arborist. Such report may not be prepared or submitted by the person or entity seeking a contract to remove the tree. The report shall be based upon a visual, on-ground inspection and shall include as a minimum the following information:

- (1) Tree identification information, including species, CHB or DBH, and location in relationship to a street intersection or property address.
- (2) Condition value as determined by an experienced arborist that has been trained on Tree Appraisal Methods and uses the rating system published in the current edition of the Guide for Plant Appraisal developed by the Council of Tree and Landscape Appraisers and published by the International Society of Arboriculture.
- (3) Hazard rating using the current edition of the Photographic Guide to the Evaluation of Hazard Trees in Urban Areas written by Nelda P. Metheny and James R. Clark, and published by the International Society of Arboriculture. Reference may be made to a finding of the tree's condition in the Town's most recent Public Tree Inventory.
- (4) Alternate recommendations for maintenance action (prune, cable and brace, remove or other) and priority (routine or immediate).

(i) The Town Administrator or his/her designee shall notify citizens of the schedule removal of a Grand Tree(s) on public property at least ten (10) days prior to removal. Notification shall be accomplished through the posting of two (2) signs, at least 8.5 x 11 inches in size, on the street and sidewalk sides of the tree and by public notice in the local newspaper or town newsletter. The signs shall remain on the tree for ten (10) days. The signs and public notice shall include, at a minimum, the following information:

- (1) Tree species, circumference and location.
- (2) Date of posting.
- (3) Reason for removal.
- (4) Contact number for the Town for more information.

(j) This provision shall not apply in emergency situations as defined in Section 6.7 below or during storm damage clean up.

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**Section 6.6** Protection During Construction and Other Activities

(a) All trees to be conserved under the provisions of this section shall be protected before and during development and harvesting against activities harmful to trees including, but not limited to:

- (1) Unnecessary cutting, breaking, or skinning of roots;
- (2) Skinning and bruising of bark;
- (3) Storing or stockpiling construction, excavation, or other machinery, tools, materials and debris within critical root zones;
- (4) Burning within critical root zones;
- (5) Dumping of wastewater within critical root zones;
- (6) Excessive foot or vehicular traffic within critical root zones; and
- (7) Parking vehicles within critical root zones.

(b) Protective barricades shall be placed around the critical root zone of all grand and significant trees in or near development areas prior to the start of development activities and shall remain in place until such activities are complete.

- (1) Barricading trees in groups shall be encouraged.
- (2) Barricading shall be erected in a radius around the trunk of the tree protected by these provisions at a distance no less than the limit of the critical root zone as defined by Section 6.3(l). Barricading shall enclose any surface roots leading from such tree.
- (3) In the event that required barricades prevent access to or circulation within the construction site, or excavation, filling, paving or hardscaping must be done within the prescribed barricaded area, the Zoning Administrator may grant permission for the developer to retreat barricading to ~~no~~ less than one foot (1') per every 3.14 inches of circumference of the tree provided that a four inch (4") layer of wood mulch or pine straw covers the unenclosed ground within the critical root zone.
- (4) Barricading shall be highly visible, constructed of chain link, wood or plastic fencing. Chain link fencing is recommended, however orange safety fencing supported by wood or rebar is an acceptable alternative. Flagged string or tape alone is not allowed as barricading before or during development.
- (5) **Encroachment into the Critical Root Zone may be allowed for structures where the Zoning Administrator has determined that the method of construction will not cause significant infringement upon the root system by cutting or by reducing available rainfall infiltration.**

(c) All tree protection areas shall be designated with signs or tape posted visibly on or within fencing denoting the area as off-limits for development activities.

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(d) Installation of utilities shall not occur without the use of special tunneling techniques to conserve root systems. In the event tunneling techniques cannot be used, trenching for utilities shall not be permitted within the critical root zone nor shall trenching disturb more than twenty-five percent (25%) of the area within the critical root zone of these trees.

(e) In the event a significant or grand tree is wounded, the wound shall be cleaned to sound wood by removal of loose bark and wood, leaving a smooth edge around the wound.

(f) In the event that it is necessary to remove any roots of significant trees, such roots shall be severed clean and treated by application of a four-inch (4") layer of mulch on the surface above such roots which is sustained during development activities.

(g) In the event soil disturbance must occur within the critical root zone of a protected tree (Grand or Significant) such disturbance shall be limited to three inches (3") in depth removed or three inches (3") in depth added. Any soil added in the critical root zone of the tree shall be a loamy soil mix to ensure minimal compaction and shall cover no more than 25% of the area within such zone.

(h) The Town shall seek to protect all Grand, Historic and Public trees during public events or gatherings by mulching with leaves, aged wood chips, pine straw or other quality organic mulch in an even layer, 3 inches deep, within the critical root zone of the tree.

**Section 6.7 Emergency Provisions**

In the event that a tree poses a serious and imminent threat to public safety due to death, disease or damage resulting from emergencies including, but not limited to fires, flooding, storms, or natural disasters, the Zoning Administrator may waive requirements of this chapter. The Zoning Administrator shall require replacement of ~~required~~ trees which are removed where it is determined that death or disease of the tree resulted from negligence or malfeasance of the owner.

**Section 6.8 Variances**

Upon demonstration of hardship, the Board of Zoning Appeals may vary the provisions of this Article. In considering hardship, the Board of Zoning Appeals, in addition to other factors, must also consider whether the trees, as situated, prevent all reasonable site configurations, and that removal of trees is the only reasonable means by which building, zoning, subdivision, health, public safety or other requirements of the Town can be met.

The Zoning Administrator may administratively waive the requirement for BZA approval of a variance to Section 6.4(b), where:

(a) There is evidence such that the Zoning Administrator can determine a Grand Tree is deceased and/or a Certified Arborist report is submitted for such that the tree is deceased to the extent that there is a severe decline in the tree's structural integrity or it is in a state or irreversible decline; or

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(b) ~~The removal of a Grand Pine Tree under the following conditions: It is demonstrated that the height of a Grand Pine Tree is such that it exceeds the distance between the tree base and a principle structure on a lot.~~

- (1) ~~It is demonstrated that the height of a Grand Pine Tree is such that it exceeds the distance between the tree base and a principal structure on a lot.~~
- (2) ~~Where the trunk of a Grand Pine Tree will conflict with the placement of the driveway, septic area or tank, drainage or like infrastructure feature. It shall be exhibited by the applicant that such infrastructure a feature cannot be reasonably placed elsewhere on the lot where it that would not conflict with the tree.~~

(c) Removal of trees approved by an administrative waiver of the variance requirement shall be mitigated with planting of indigenous trees (reference Table 1) ~~with having~~ a minimum 3 inch caliper at the time of installation. The number of trees required shall have a total circumference equal to or greater than the difference between the removed tree's circumference and 76 inches CBH.

(d) In the event that the planting of required mitigation trees is determined to be detrimental to the overall health of existing trees or impractical for the intended site design, a fee in lieu will be received by the Town and deposited into a Tree Fund, hereby established, for use by the Tree Committee to plant and maintain trees on public lands within the town in accord with Section 6.9(f). A fee of \$400 per tree will be required, in accordance with Section 6.8(b), should the trees not fit on the applicant's property.

#### **Section 6.9** Violations and Penalties

Any person, firm, organization, society, association or corporation, or any agent or representative thereof who commits, participates, or assists in removal of trees in violation of this ordinance shall be guilty of a misdemeanor and upon conviction, punishable pursuant to Article XII, and the following:

(a) Should violations be noted during the course of a project or at final inspection, the Zoning Administrator may cause permits to be revoked and withhold certificates of occupancy. No further activity shall be had on the site until such time as the Board of Zoning Appeals determines if remedial actions are necessary, including but not limited to: replacement of illegally removed trees; replacement of required trees which are damaged, diseased, dying, or dead; remedial actions to protect trees during construction.

(b) Significant Trees. Where sites are cleared of significant trees in violation of this chapter, such trees shall be replaced in accordance with a replacement schedule approved by the Board of Zoning Appeals, which shall recommend the number, species, size and location of replacement trees, according to the following criteria:

- (1) A combined circumference which equals or exceeds, 200 inches per acre shall be provided, and
- (2) One-half of individual replacement trees shall be at least 2" caliper, or six inches (6") or greater in circumference.

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(c) Grand or Historic Trees. Where Grand or Historic trees have been removed in violation of this chapter or where removal is necessitated at any time due to acts of negligence, trees shall be replaced in accordance with a replacement schedule approved by the Board of Zoning Appeals. The Board of Zoning Appeals shall recommend the number, species, size, and location of replacement trees, according to the following criteria:

- (1) The combined circumference of replacement trees is equal to or greater than the circumference of the tree removed; and
- (2) Each individual replacement tree is at least three inches (3") or greater in caliper.
- (3) Replacement trees will be inspected periodically for 2 years by the Tree Committee to assure growth and viability.

(d) Public Trees. The Town of McClellanville shall require compensation for the damage or destruction of a public tree equal to the appraised value of the tree prior to the damage. In addition, All Public trees removed shall be replaced within two (2) years after removal by the party responsible for destruction of the tree. If the site where the tree was removed is not suitable for replanting, a tree shall be planted in a suitable location as close as possible to the removal location. If there is not suitable location close to the removal location, then a tree shall be planted in a location planned for planting by the Town in the vicinity of the removed tree.

(e) Tree Fund.

- (1) Where trees have been removed in violation of this chapter or the planting of required trees is determined to be detrimental to the overall health of existing trees or impractical for the intended site design, a fee in lieu will be received by the Town and deposited into a Tree Fund, hereby established, for use by the Tree Committee to plant trees on public lands within the town or for public education on the benefits of trees and tree maintenance. The Tree Mitigation Fee shall be based on the current market value of 3" caliper trees installed to the American Association of Nurserymen Standards, including installation, delivery and mulching. Fee currently set at \$400 per 4-inch DBH tree.
- (2) Where it is found that a grand or historic tree has been removed or intentionally damaged such that removal is necessitated, a penalty of an amount equivalent to twice the appraised value of the tree prior to damage or removal shall be placed in the Town's Tree Fund. No building permit shall be issued for that property for a period of two (2) years after tree removal.
- (3) If the applicant disagrees with the amount of the Tree Mitigation Fee imposed, they may file an appeal with the Board of Zoning Appeals in accord with the provisions in this Ordinance.

Changes noted as follows

Existing/adopted Text

~~Text for removal~~

Recommended New Text

# Town of McClellanville Zoning and Land Development Ordinance

## Article X: Land Development Approvals Amendment

### Section 10.6 Application Submission Requirements

#### §10.6.1 Preliminary Plans

##### (2) Existing Site Data.

- a. The distance and bearing of one of the corners of the boundary of the development to the nearest intersection of existing streets or roads.
- b. Total tract boundaries of the property being developed, showing bearing and distances, and a statement of total acreage of the property.
- c. All existing municipal boundaries, property lines, rights of way, easements, fire hydrants, utility transmission lines, culverts, bridges, storm drainage ditches, water courses, delineated wetlands, flood zones (available from FIRM Flood Hazard Maps), wooded areas including the location of any grand trees, endangered species habitats when required by federal laws or regulations, and buildings and other structures.
- d. All existing streets, including streets of record (recorded but not constructed) on or abutting the tract, including the names, right-of-way widths, pavement widths, and approximate grades.
- e. Spot elevations at a density of no less than fifty per acre.