

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )  
TOWN OF MEGGETT )

**ORDINANCE NO: 2021-07**

.....  
**AN ORDINANCE REVISING PROVISIONS OF THE TOWN CODE RELATING TO TREE PROTECTION  
& PRESERVATION**  
.....

**WHEREAS**, the Town of Meggett finds it necessary to revise certain provisions of its Zoning and Land Development Regulations within its Town Code to make changes as are necessary and appropriate to accomplish the goals and objectives within its Code and its Comprehensive Plan in accordance with state law;

**WHEREAS**, S.C. Code § 6-29-760(A) states that before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures.

**WHEREAS**, the Meggett Planning Commission held a public hearing on September 22, 2021, after which the Planning Commission made a recommendation to Town Council in regard to these amendments.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF MEGGETT, SOUTH CAROLINA, IN COUNCIL MET:**

That from and after the passage and approval of this ordinance, Chapter 9, Tree Protection and Preservation, of the Zoning and Land Development Regulations Ordinance for the Town of Meggett is amended as follows<sup>1</sup>:

**Chapter 9, Tree Protection & Preservation**

**Article 9.1, General**

**§9.1.1 Findings**

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, and enhancing natural drainage of stormwater and sediment control. They also help conserve

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<sup>1</sup> Changes to the original text are shown as follows: Deletions are shown as strikethroughs and additions are shown as underlined by a double line.

energy by providing shade, and shielding against noise and glare. Trees promote commerce and tourism by buffering different land uses and beautifying the landscape. Trees enhance the Lowcountry quality of life as a sacred and inseparable part of its historical legacy.

### **§9.1.2 Purpose**

The Tree Protection and Preservation regulations of this article are intended to enhance the health, safety and welfare of the Town of Meggett citizens.

### **§9.1.3 Applicability & Exemptions**

#### **~~A.~~**

##### 1. Applicability

The provisions of this article in their entirety shall apply to all real property in the Town of Meggett that:

- ~~• is presently zoned or where an application is pending for rezoning to the RC, AR, AG, OCM, LIN, or PD zoning district.~~
- ~~• is designated as appropriate for rezoning to the RC, AG, AR, OCM, LIN, or PD zoning district.~~

~~These 2 categories of properties are hereinafter referred to as "non-exempt" for purposes of this article, except as otherwise expressly exempted.~~

The provisions of this Article in their entirety shall apply to all real property in the Town of Meggett, except as otherwise expressly exempted.

#### **B. Partial Exemptions**

~~Single-family residential subdivisions for which preliminary subdivision application has been made proposing new roads or easements or extensions to existing roads or easements will be subject to all of the Administration provisions of Sec. 9.2.~~

#### **C. Full Exemptions**

~~The following uses and activities shall be exempt from all provisions of this article:~~

- ~~1. **Electric Suppliers, Public Utilities and Public Works:** This article shall not restrict public utilities, electric suppliers, and the Public Works department from maintaining safe clearance around existing utility lines, drainage ditches, and existing easements in accordance with existing maintenance agreements and practices. Siting and construction of future water, sewer, gas, telephone, drainage, communications, electrical line or other easements shall be exempt from the provisions of this article. Utility easements for which a Conditional Use Permit was granted prior to adoption of this article shall be fully exempt.~~

- ~~2. **Bona Fide Forestry Operations:** Removal of trees for the purpose of conducting “bona fide forestry operations” shall be exempt from the provisions of this Article except for removal of Grand trees. For this use to be allowed, the contiguous parcels must have five acres or more of forest land. Additionally, if a parcel is harvested of Grand Trees zoning permits or development applications may not be submitted within five years of issuing permit for the harvest because, it shall be presumed that such harvest was done in anticipation of future development and is not considered a bona fide forestry activity as defined by this ordinance. Any person seeking to rebut this presumption shall have the burden of proving their claim by clear and convincing evidence. “Bona fide forestry operations” shall mean that the property is eligible for, and actually used for forestry or timber operations, and written application has been approved by the County Assessor for the special assessment for agricultural use for the property in question pursuant to SC Code Section 12-43-220, SC Department of Revenue Regulation 117-1780.1. and other applicable statutes, rules and regulations.~~
- ~~3. **Commercial Nursery Operations:** Commercial nursery operations shall be exempt from the provisions of this article.~~
- ~~4. **Agricultural Uses:** Removal of trees for the purpose of establishing bona fide agricultural uses shall be exempt from the provisions of this article.~~
- ~~5. **Charleston County Aviation Authority:** Removal of trees for the purposes of maintaining safe clearance for aircraft as required by federal law or the establishment of facilities exclusively dedicated to aviation operations on property owned or leased and in use by the Charleston County Aviation Authority will be exempt from the provisions of this article.~~

## 2. Exemptions

- A. Single family detached residential lots of record shall be exempt from all provisions in this Article except for the Grand Tree documentation, protection, and replacement provisions. This exemption does not include applications for Major or Minor Subdivisions for which landscape buffers may be required.
- B. This article shall not restrict public utilities, electric suppliers, and the Public Works department from maintaining safe clearance around existing utility lines, drainage ditches, and existing easements in accordance with existing maintenance agreements and practices. Siting and construction of future water, sewer, gas, telephone, drainage, communications, electrical line or other easements shall not be exempt from the provisions of this article. Utility easements for which a Conditional Use Permit was granted prior to adoption of this article shall be fully exempt.
- C. Removal of trees for the purpose of conducting “bona fide forestry operations” shall be exempt from the provisions of this Article except for removal of Grand trees.

For this use to be allowed, the contiguous parcels must have five acres or more of forest land. Additionally, if a parcel is harvested of Grand Trees, zoning permits or development applications may not be submitted within five years of issuing permit for the harvest because, it shall be presumed that such harvest was done in anticipation of future development and is not considered a bona fide forestry activity as defined by this ordinance. Any person seeking to rebut this presumption shall have the burden of proving their claim by clear and convincing evidence.

“Bona fide forestry operations” shall mean that the property is eligible for, and actually used for forestry or timber operations, and written application has been approved by the County Assessor for the special assessment for agricultural use for the property in question pursuant to SC Code Section 12-43-220, SC Department of Revenue Regulation 117-1780.1. and other applicable statutes, rules and regulations.

- D. Commercial nursery operations shall be exempt from the provisions of this article.
- E. Removal of trees for the purpose of establishing bona fide agricultural uses, as specified in Section 10.3.1 of this Ordinance, shall be exempt from the provisions of this article except for the Grand Tree documentation, protection and replacement provisions.
- F. Removal of trees for the purposes of maintaining safe clearance for aircraft as required by federal law or the establishment of facilities exclusively dedicated to aviation operations on property owned or leased and in use by the Charleston County Aviation Authority will be exempt from the provisions of this article.

### **3. Definition of “Tree Removal”**

For the purpose of this Article, the term "tree removal" shall include, but not be limited to, damage inflicted to the root system by machinery; girdling; storage of materials and soil compaction, changing the natural grade above or below the root system or around the trunk; damage inflicted on the tree permitting fungus infection or pest infestation; excessive pruning; excessive thinning; 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. Excessive pruning or thinning shall be pruning or thinning that exceeds more than 25 percent of the leaf surface on both the lateral branch and the overall foliage of a mature tree that is pruned within a growing season. Additionally, one-half of the foliage of a mature tree is to remain evenly distributed in the lower two thirds of the crown and individual limbs upon completion of any pruning.

### **4. Measurements & Definitions**

- A. **Diameter Breast Height:** The Diameter Breast Height (DBH) of a tree is the total diameter, in inches, of a tree trunk or trunks measured 4½ feet above existing grade (at the base of the tree). In measuring DBH, the circumference of the tree shall be

measured with a measuring tape designed specifically to calculate diameter. A standard measuring tape may be used to measure diameter when the circumference is divided by 3.14. If a tree trunk splits at ground level and the trunks do not share a common base (separated by earth at natural grade), then each trunk shall be measured as a separate tree. If a multi-trunk tree splits below the 4.5-foot mark and the trunks share a common base, all trunks shall be measured separately, added together, and count as one tree. Any trunk measuring less than 8 inches DBH is not included in the calculation.

- B. Caliper:** Caliper is the diameter of a tree trunk measured six inches above the ground on trees with calipers of four inches or less. For trees between four-inch and 12-inch caliper, the trunk is measured 12 inches above the ground.
- C. Grand Tree:** A Live Oak tree that is 24" diameter at breast height (DBH) or greater. All Grand Trees are prohibited from removal unless a Variance is granted by the Board of Zoning Appeals.

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## **Article 9.2 Administration**

### **§9.2.1 Zoning Permit Required**

#### **A. Tree Removal**

Removal of grand trees is prohibited prior to the issuance of a Zoning Permit by the Planning Director. Zoning Permits will be issued only after a tree plan is approved by the Planning Director, as outlined below. No Live Oak trees with a diameter at breast height (DBH) of 24" or greater may be removed without a variance approved by the Board of Zoning Appeals.

#### **B. Excess Canopy (Limb) Removal**

1. Removal of three or more limbs on a Grand Tree with an individual diameter of six inches or greater shall require a Zoning Permit.
2. Removal of any size limbs which contribute to more than one hundred continuous linear feet of canopy over public roadways shall require Variance approval from the Board of Zoning Appeals. This requirement shall not preclude the SCDOT, CCPW or other entities from maintaining height clearances of 14' or less and width clearances within designated travel ways and from removing unprotected trees along right-of-ways for road widening projects.

#### **C. Documentation**

Tree plans, prepared by a licensed registered surveyor, civil engineer or landscape architect shall be required on all non-exempt parcels before any zoning permits are issued.

### **§9.2.2 Documentation**

Tree plans, prepared by a licensed registered surveyor, civil engineer or landscape architect, shall be required for all of the following:

- Preliminary subdivision applications which include proposed roads or easements, or extensions of existing roads or easements;
- Final plat applications that have lots 1 acre or less; and
- Applications for Zoning Permits to remove trees for site development (an approved, recorded plat and development site plan must accompany tree plans).

### **§9.2.3 Tree Plans**

Tree plans of the same scale as, or superimposed on a development site plan or preliminary plat shall include:

- A. Where a tree plan is included on a preliminary plat in accordance with the Subdivision Regulations, the name, address, signature, and seal of the licensed surveyor and civil engineer, registered in the State of South Carolina shall be provided. In addition, tree plans required for preliminary subdivision applications on partially exempted properties (Sec. 9.1C.2) or non-exempt properties (Sec. 9.1C.1) which include proposed roads or easements or extensions of existing roads or easements shall indicate the location, size, and species of all Grand Trees within rights-of-ways or easements and in the areas adjacent to each side of the right-of-way easement, extending to a depth to be determined by the Planning Director.
- B. In cases where a landscape architect, civil engineer, forester or surveyor utilizes previously approved recorded plats prepared by surveyors, for the purpose of showing a tree plan, the name, address, signature and seal of the licensed landscape architect, engineer, surveyor who shall be responsible for the accuracy of information provided.
- C. Location, number, size (DBH) and species of all trees to be preserved, and those scheduled to be removed (including dead and diseased trees) and replaced.
- D. A plan outlining the manner in which trees are to be protected during development.
- E. For developments of 10 acres or greater requiring large common/open space areas, including but not limited to, parks, playgrounds, and golf courses, a scaled infrared or high resolution black and white aerial photograph or print of equal quality may be

substituted in cases where the Planning Director determines that it would provide the same information as a tree plan.

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## **Article 9.3 Tree Plans & Surveys**

### **§9.3.1 General**

Tree plans of the same scale as, and superimposed on, a development site plan or preliminary plat shall include location, number, size (DBH), and species with a scaled graphic representation of each Grand Tree, canopy size and shape, and the trunk location.

All required tree surveys shall include the name, phone number, address, signature, and seal of a licensed surveyor, landscape architect, or civil engineer registered in the State of South Carolina.

The survey shall include all trees to be protected or preserved, and those scheduled to be removed, including dead and damaged trees.

In cases where a previously approved recorded plat is utilized for the purpose of tree plans the name, address, phone number, signature and seal of the licensed landscape architect, civil engineer, forester or surveyor, registered in the State of South Carolina shall be provided.

A scaled infrared or high-resolution black and white aerial photograph or print of equal quality may be substituted in cases where the Planning Director determines that it would provide the same information as a tree plan. However, all Grand Trees within 40 feet of proposed construction and land disturbance areas and trees within required buffers must be surveyed and mapped.

### **§9.3.2 Commercial or Industrial Parcels**

- A. All tree surveys must show the location, number, size and species of all trees 8 inches or greater DBH (Diameter Breast Height) including those scheduled to be removed.
- B. When there are no trees 8 inches or greater DBH, documentation of this fact shall be provided from a registered surveyor, engineer or landscape architect.

[Commentary: Assistance in tree identification and condition should be provided by a forester or qualified arborist.]

### **§9.3.3 Single-Family Detached Residential Parcels**

- A. Single Parcels Under 10-Acres  
Single family detached residential parcels under 10-acres shall show all Grand Trees within the parcel's boundaries and in conjunction with the subdivision regulations of this Ordinance at the time a zoning or building permit application is made.

B. Single Parcels Over 10-Acres

Single family detached residential parcels over 10-acres shall show all Grand Trees within the area of construction and land disturbance and in conjunction with the subdivision regulations of this Ordinance at the time a zoning or building permit application is made.

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**Article 9.4 Required Tree Protection**

**§9.4.1 General**

All Grand Trees and any other trees required to remain on a site as outlined in this Ordinance must be protected during construction and development of the parcel. Tree protection must be shown on all development plans prior to site plan approval. A site inspection of the tree barricades must be scheduled by the applicant with the Planning Department for approval prior to the issuance of permits or the start of development activities.

Prior to issuance of a zoning permit, a pre-construction planning conference for tree preservation is required on site with the Planning Director's representative, the applicants, and any parties deemed appropriate for the purpose of determining if there is a need for additional tree protection techniques and for designating placement of tree barricades, construction employee parking, temporary construction office and dumpsters.

**§9.4.2 Tree Protection During Development and Construction**

Protective barricades shall be placed around all required trees in or near development areas on all zoning parcels, prior to the start of development activities. These barricades, constructed of wood or plastic fencing or other approved materials shall be erected in accordance with standards by the Planning Director and placed beneath the canopy drip line or one and one-half feet times the DBH of the tree. Other protective devices or construction techniques may be used as approved by the Planning Director. The barricades shall remain in place until development activities are complete. The area within the protective barricade shall remain free of all building materials, dirt, fill, or other construction debris, vehicles, and development activities. All required trees are subject to the enforcement criteria of CHAPTER 11.

**§9.4.3 Partial Exception for Limited Clearing**

Limited clearing and grubbing may be authorized by the Planning Director prior to the installation of protective tree barricades on sites that exhibit unusually heavy undergrowth where access to the interior of the site and its protected trees would be otherwise highly impractical. Limited clearing shall be for the express purpose of accessing the property and protected trees to erect the required tree protection and silt fencing. For the purposes of this Article, limited clearing shall be clearing done with hand tools, push or walk behind equipment or lightweight bush-hog type equipment designed specifically for brush and undergrowth clearing

that is not capable of removing vegetation greater than 3 inches in diameter. Under no circumstances will metal tracked bulldozers, loaders, or similar rider/operator types of equipment be allowed on the site until the protective barricades are erected and a zoning permit is issued.

#### **§9.4.4 Separation of Trees from Pavement, Grading and Structures**

Paved areas shall be separated from trees by a minimum distance of the drip line or one and one-half feet times the DBH or as modified by the Planning Director as deemed necessary to protect the root system of the tree. Paved areas shall not constitute more than 25 percent of the protected area beneath a tree. Any paving, grading, trenching, or filling within the remaining 75 percent of the protected area must be approved by the Planning Director and may require specific construction techniques be used in order to preserve the health of the tree. When grading and construction within the protected area of a tree has been approved, all damaged roots shall be severed clean and inspected by a qualified Arborist prior to the receipt of a Zoning Permit (at the applicant's expense).

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### **Article 9.5 Tree Removal**

#### **§9.5.1 General**

Permits for tree removal may be approved where one or more of the following conditions are deemed to exist by the Planning Director:

- A. Trees are not required to be retained by the provisions of this Article.
- B. Trees are diseased, dead or dying (as determined by the Planning Director or a qualified arborist);
- C. Trees pose an imminent safety hazard to nearby buildings, or pedestrian or vehicular traffic (as determined by the Planning Director or a qualified arborist); or
- D. Removal of required trees has been approved by the Board of Zoning Appeals.

#### **§9.5.2 Variances**

Grand Trees and protected trees that do not meet the above criteria may be removed only where approved by the Board of Zoning Appeals, and shall be replaced according to a schedule determined by the Board. The Planning Director will make recommendations to the Board concerning the number, species, DBH or caliper, and placement of such trees.

#### **§9.5.3 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, and natural disasters, the Planning Director may waive requirements of this Article. Documentation must be submitted for review outlining the threat to public safety which initiated the removal. Documentation must include any written findings by a qualified arborist and photographs supporting the tree removal emergency. The Planning Director may require replacement of required trees that are removed where it is determined that death or disease resulted from negligence.

#### **§9.5.4 Violations & Penalties**

Violations and penalties are specified in CHAPTER 11 of this Ordinance.

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### **Article 9.6 Tree Replacement**

#### **§9.6.1 General**

Tree replacement shall be required accompanying development on all non-exempt properties in the manner described below:

- A. When replacement canopy trees are required in fulfillment of the requirements of this Article, they shall be no smaller than two and one-half-inch caliper.
- B. The Planning Director or Board of Zoning Appeals is empowered to require trees of larger caliper as determined appropriate for site-specific conditions and the circumstances, lawful or illegal, under which removal occurred.

#### **§9.6.2 Previously Cleared Sites**

Where sites were completely cleared of trees prior to adoption of this Article or have been cleared subsequently for activities exempted from this Article, replacement trees shall be planted, the combined caliper of which equals or exceeds 40 inches per acre. Replacement schedules, including number, species, caliper and placement shall be approved by the Planning Director.

#### **§9.6.3 Tree Fund**

The Tree Fund is a fund established to receive monies exacted from tree removal violation fines to include, but not be limited to, removal, damage, destruction, or as defined in Section 9.1.4 of this Chapter, and as a form of mitigation when planting of the required trees is determined to be detrimental to the overall health of existing trees or impractical for the intended site design. The Planning Director shall impose a Tree Mitigation fee based on the current market retail value of two- to three-inch caliper trees installed to the American Association of Nurserymen Standards. If the applicant disagrees with the amount of the Tree Mitigation fee imposed, they may file appeal with the Board of Zoning Appeals in accordance with the provisions contained in this Ordinance. All Tree Mitigation fees collected shall be paid to the Town of Meggett and placed in

an account established exclusively for public beautification through the planting of trees in the Town of Meggett.

#### **§9.6.4 Bankruptcy or Abandonment of Site**

When trees have been removed through an approved mitigation program and the project will not be completed for any reason (i.e., bankruptcy, abandonment, change in ownership, etc.), the owners of the subject property are responsible for the mitigation of the removed trees as outlined and agreed or subject to Section 9.6.3 of this Chapter.

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#### **Article 9.7 Inspections & Final Approval**

- A. The Planning Director shall periodically visit development sites prior to completion to monitor compliance with the tree plan approved for a project.
- B. Prior to issuance of a Certificate of Occupancy for a completed structure by the Director of Building Services, the Planning Director shall issue a statement of approval attesting to the developer's compliance with the site plan approved for the project (including landscaping, parking, drainage, etc.). The Director of Building Services shall withhold certificates of occupancy pending verification of compliance. It is the responsibility of the owner or agent to contact the Planning Director regarding the compliance inspection. Such inspections will occur within five working days of contact. Failure to obtain a Certificate of Occupancy prior to occupying or using the building for its intended purpose will result in ticketing and fines.
- C. Within three years of the issuance of the Certificate of Occupancy, the Planning Director shall perform a site inspection to verify the health of trees which were retained to meet the requirements of this Article and which may have suffered damage due to insufficient protective measures during development.
- D. Each required tree that is determined by the Planning Director to be diseased or injured to the extent it is irreparably damaged shall be approved for removal. The burden of proof of the extent of the disease or injury shall rest with the applicant, who must provide documentation from a qualified arborist. Any tree damaged during or as a result of construction shall be repaired to the satisfaction of the Planning Director and in accordance with accepted ANSI A300 or International Society of Arboriculture practices. Tree damage must be repaired prior to issuance of a Certificate of Occupancy.
- E. The owners of a non-exempt property or properties shall be responsible for the maintenance of all required trees. No department or agent of the Town of Meggett is in any way responsible for the maintenance of required trees on private property.

**THE WITHIN ORDINANCE SHALL BECOME EFFECTIVE ON ADOPTION BY COUNCIL AFTER THE SECOND READING OF THIS ORDINANCE.**

**DONE AND RATIFIED** in Council assembled on this \_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
**Harry V. "Buster" Herrington, III**  
**Mayor**

**ATTEST:**

\_\_\_\_\_  
**Virginia Ravenel**  
**Town Clerk**

**Moved By:**  
**Date of First Reading:**  
**Date of Second Reading:**

**(SEAL)**