

CITY OF ROLLINGWOOD
ORDINANCE NO. 2019-02-20 (B)

**AN ORDINANCE AMENDING ARTICLE 3.05 OF THE CODE OF ORDINANCES TO
PROVIDE FOR AMENDED LANDSCAPING REGULATIONS FOR NON-
RESIDENTIAL USES AND TO PROVIDE FOR PROTECTION OF CERTAIN TREES
ON PROPERTY USED FOR RESIDENTIAL USES; PROVIDING PENALTIES FOR
VIOLATIONS, SEVERABILITY, AND AN EFFECTIVE DATE**

WHEREAS, the City Council desires to amend and clarify regulations pertaining to landscaping of non-residential property, and to provide for protection of certain large trees in residential areas; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLINGWOOD,
TEXAS:**

SECTION 1. Article 3.05 of the City Code of Ordinances is amended to provide as follows:

ARTICLE 3.05 LANDSCAPING

Division 1 Non-Residential Regulations

Sec. 3.05.001 Removal of vegetation from right-of-way

Any excavation, grading or site clearance of a lot zoned for commercial use, including planned unit development, which involves the removal of vegetation from the city's right-of-way is prohibited without prior written approval of the city building official. Damaged, destroyed or removed trees having a height of eleven (11) feet or more shall be restored in accordance with the landscape provisions of section 3.05.002 of this article.

Sec. 3.05.002 Landscape Requirements

(a) The provisions of this section are applicable to every lot zoned for a use other than residential, with respect to which a building permit for any new structure or enlargement of any existing structure is issued.

(b) Twenty percent (20%) of the total area of each lot shall be devoted to landscaped open space, with one (1) tree being required for each two thousand (2,000) square feet of area, or fraction thereof, of each lot. Each required tree shall be at least twelve (12) feet high when planted and shall be maintained in a healthy condition. Said trees shall not be pruned except either to remove dead wood, or to prevent growth or to remove existing growth lower than fifteen (15) feet above the ground. Existing trees having a height of at least eleven (11) feet may be counted as required trees, provided that the ground beneath the canopy remains unimproved. Any species of tree which does not normally grow to a height of fifteen (15) feet in the city, as determined by the city arborist

or other competent person designated by the city administrator, shall not qualify as a required tree under this section.

(c) When off-street parking for ten (10) or more vehicles is provided, there shall be landscaped open space within the perimeter of the parking area or areas, in the minimum amount of eighteen (18) square feet for each parking space. Said landscaped open space need not be contiguous, but there shall be at least one (1) tree in each separate area. Said trees shall be included in computing the number of trees required in subsection (b) of this section.

(d) All required tree plantings shall be installed prior to the occupancy or use of property. Where compliance is not practicable due to the season of the year, the building official shall grant an appropriate delay. Any certificate of occupancy may be revoked, after thirty (30) days' written notice to the occupant and the owner of the affected property, if tree plantings are not undertaken or maintained as required under this article.

(e) A nonresidential lot that is adjacent to a public street or right-of-way or that is adjacent to a residential property line shall have a landscaped greenbelt at least twenty (20) feet in width measured from the property line parallel with and adjacent to each such street, right-of-way or residential property line. An exception may be approved by the city council for the location of a driveway in such required landscaped greenbelt. Such greenbelt shall contain a minimum of one (1) tree, not less than twelve (12) feet in height, for every five hundred (500) square feet of greenbelt.

Sec. 3.05.003 Variances

The city council is authorized, upon written appeal of a property owner or developer subject to the requirements of this article, to grant a variance from the requirements of this article as will not be contrary to the public interest, where, due to special conditions, literal enforcement of the requirements of this article will result in unnecessary hardship, and so that the spirit of this article shall be observed and substantial justice done. In considering any proposed variance, the following rules shall be observed:

- (1) The applicant for the variance must present to the city council a set of plans setting out the applicant's proposal and the nature of the proposed variance.
- (2) The proposed variance may not substantially adversely affect any adjoining property or the general welfare of the community.
- (3) The city council must find that the granting of the variance will not merely serve as a convenience to the applicant, but will serve to alleviate some demonstrable and unusual hardship or difficulty based on the condition of the affected property or surrounding areas.

Division 2 – Residential Tree Canopy Management

Sec. 3.05.004 – Purpose

- (a) The Tree Code regulations protect the health, safety, and general welfare of the citizens of Rollingwood. In doing so, the appearance of the City is enhanced and important ecological, cultural, and economic resources are protected for the benefit of the City’s residents, businesses, and visitors.
- (b) The sections within this division address trees in both development and non-development situations and seek to enhance the quality of the tree canopy and optimize the benefits that trees provide.
- (c) For development situations, additional requirements to this division are designated in Chapter 10 of this Code.

Sec. 3.05.005 – Applicability

- (a) This division applies to property in the residential zoning district and to any other property to which section 3.05.002 of this code does not apply.

Sec. 3.05.006 – Definitions

In this division:

- (a) PROTECTED SPECIES means:

- (1) Ash, Texas
- (2) Cypress, Bald
- (3) Elm, American
- (4) Elm, Cedar
- (5) Madrone, Texas
- (6) Maple, Bigtooth
- (7) All Oaks
- (8) Pecan
- (9) Walnut, Arizona
- (10) Walnut, Eastern Black

- (b) PROTECTED TREE means:

(1) a tree that has a trunk with a diameter of (12) inches or more, measured four and one-half (4.5) feet above ground, and is one of the protected species;

- (c) REPLACEMENT SPECIES means:

(1) for trees planted within 20 feet of an above-ground power, cable, or telephone line:

- (i) Anacacho Orchid Tree
- (ii) Common Tree Senna
- (iii) Crape Myrtle (dwarf)
- (iv) Desert Willow
- (v) Evergreen Sumac
- (vi) Eve’s Necklace
- (vii) Flameleaf Sumac

- (viii) Goldenball Leadtree
- (ix) Mexican Buckeye
- (x) Mexican Plum
- (xi) Possumhaw Holly
- (xii) Rough Leaf Dogwood
- (xiii) Texas Mountain Laurel
- (xiv) Texas Persimmon
- (xv) Texas Pistache
- (xvi) Texas Redbud
- (xvii) Wax Myrtle
- (xviii) Yaupon Holly

(2) for all other trees planted within a property, a protected species.

(d) REPLACEMENT TREE means:

(1) for the replacement species listed in subsection 3.05.006(c)(1), a tree at least eight (8) feet high when planted, which shall be maintained in a healthy condition after planting;

(2) for the replacement species listed in subsection 3.05.006(c)(2), a tree with a diameter equal to not less than one-fourth the diameter of the protected tree it replaces up to a maximum diameter of six (6) inches, which shall be maintained in a healthy condition after planting. The diameter of protected and replacement trees shall be measured 4.5 feet above the ground when planted.

(f) REMOVAL means an act that causes or may be reasonably expected to cause a tree to die, including:

- (1) uprooting;
- (2) severing the main trunk;
- (3) damaging the root system, including, but not limited to, (i) adjusting the grading of a lot to cover or uncover a tree trunk or root system to the extent that the adjusted grading causes or may be reasonably expected to cause the tree to die; (ii) placing fixtures over the root system to the extent that the placement of the fixtures causes or may be reasonable expected to cause the tree to die; or
- (4) excessive pruning, including, but not limited to, pruning that exceeds 25% of the canopy of the tree.

(g) CERTIFIED ARBORIST means an ISA certified arborist.

Sec. 3.05.007 – Administration

(a) A city arborist shall be appointed by the City Council to assist in promulgating forms for use under this division and to decide all applications for removal of a protected tree.

(c) If an applicant requests a variance as permitted under this division, the city arborist shall direct the request to the city council and make a recommendation to the city council whether to approve the variance request.

(e) The list of eligible protected tree species under 3.05.006(a) and the list of eligible replacement tree species under 3.05.006(c) may be supplemented by approval of the City Council, in consultation with the city arborist or as provided by subsection (g).

(f) An applicant may satisfy a tree replacement requirement by planting the required replacement tree(s) on the property affected by the protected tree removal, or on one or more other property(s) approved by the arborist or other designated agent of the city if: (i) the benefit to residents of the city would be as great as replacement on the property affected by the protected tree removal; and (ii) the owner(s) of such other property(s) agree in writing to maintain the replacement trees in a healthy condition and replace same with like trees, as necessary as a result of a death of such tree(s), for a period of not less than three (3) years. years.

(g) For purposes of 3.05.007(f) the City and the owner may consult with an academic organization, state agency, nonprofit organization, or the city arborist to identify an area for which tree planting will best address the science-based benefits of trees and other reforestation needs of the municipality within and outside of the City limits.

(h) The City Council shall provide for fees payable for review of applications for permits and variances pursuant to this article.

Sec. 3.05.008 – Removal of Protected Trees

(a) A person may not remove a protected tree without a tree removal permit for the removal and compliance with the terms of this division.

(b) Emergency pruning or removal. Notwithstanding subsection 3.05.008(a), a person may perform emergency pruning or removal of a protected tree as follows:

(1) When the condition or location of a protected tree presents a clear and immediate danger to a structure or to the health and safety of the public, the hazardous portion of the protected tree may be removed without first obtaining a required tree removal permit.

(2) In the course of performing emergency repairs to a road or water, wastewater, or drainage facilities, agents or contractors of the City may trim, prune or remove a protected tree as required to perform such work without first obtaining a tree removal permit. If such activities occur during normal business hours, the City shall first attempt to contact the city arborist to determine if the city arborist can provide immediate guidance and assistance. If such assistance is not immediately available, then the pruning or removal may occur in accordance with the requirements under article 8.06 of this Code.

(3) Any person who prunes or removes a protected tree under the provisions of this subsection shall, within seven (7) days of such action, apply for a tree removal permit providing for replacement trees as required by this division. The application shall include photographs or other documentation to demonstrate the requisite clear and immediate danger. The city arborist will evaluate the information to determine whether a clear and immediate danger existed. A failure to submit an application or a failure to submit information demonstrating the clear and immediate danger shall constitute a violation of this division.

(c) The requirements of this division apply to trees on public and private property. To the extent of conflict with another section of the Code, this division applies.

Sec. 3.05.009 – Application for Protected Tree Removal and Tree Removal Permits

- (a) An applicant may request a tree removal permit application from the City by phone, U.S. mail, fax, email or in person.
- (b) An application for removal of a protected tree located on public property, a right-of-way or a public easement may be submitted by:
 - (1) an agent of the city, a public utility, or another political subdivision with the authority to install the public facilities and perform the work necessitating the removal of the protected tree or
 - (2) The owner of the property adjoining the site of the protected tree.
- (c) An application for removal of a protected tree on private property may be submitted by or on behalf of the owner of the property on which the tree is located.
- (d) An application for removal of one or more protected tree(s) must be submitted to the city secretary and approved prior to removal of the protected tree. If the application is approved as provided for in this division, a permit shall be issued indicating each protected tree that is approved for removal and indicating the location(s) and size(s) of any required replacement trees and the dates by which replacement trees must be planted.
- (e) An application that proposes removal of a protected tree shall include the required permit application fee.
- (f) An application for removal of a protected tree shall include any proposal for type(s) and location(s) of replacement trees on a site plan of affected property(s).
- (i) A permit for removal of a protected tree expires one year after its effective date except that if any building permit issued for the associated property expires or is revoked for any reason, the permit for removal of a tree shall expire as well. Subject to applicable expiration, a permit for removal of tree(s) is transferable to a subsequent owner of the affected property, provided that any obligation in the permit with respect to replacement trees is assumed by the transferee.

Sec. 3.05.009 – Conditions for Approval

- (a) If the protected tree is located within a setback area and the total width of the setback area is greater than ten (10) feet from the edge of a property, the protected tree shall be replaced with a total of three (3) replacement trees that may include a selection of replacement trees under 3.05.006(d)(1) and (d)(2), and shall include at least one (1) replacement trees under 3.05.006(d)(2).
- (b) If the protected tree is not located within an area specified in section 3.05.009(a), the protected tree shall be replaced by one (1) replacement tree under either section 3.05.006(d)(1) or section 3.05.006(d)(2).
- (c) If the protected tree trunk straddles an area specified in section 3.05.009(a), the protected tree is deemed to be in the area specified in section 3.05.009(a) if more than half of the diameter of the tree is within the area specified in section 3.05.009(a).
- (d) If the city arborist determines under 3.05.008(b)(3) that an emergency existed **at the time of removal that necessitated expedited removal** or an applicant provides documentation from a certified arborist that a protected tree is diseased, dead, or poses an imminent or immediate threat to persons or property due to natural causes only and the protected tree falls under section 3.05.009(a), the city arborist may reduce the replacement tree requirement to one (1) replacement tree under either section 3.05.006(d)(1) or section 3.05.006(d)(2).
- (e) The Mayor may act to waive the replacement tree requirement under section 3.05.009(d) for a storm event, wildfire or other calamity that causes widespread or costly damage to multiple protected trees throughout the City.

(f) For a permit filed with an application for development of any improvements or structures, if the density of protected trees in an area described in section 3.05.009(b) is greater than seven (7) protected trees, the number of replacement trees required under section 3.05.009(b) for a removal from such area is capped at seven (7) replacement trees, at least three (3) of which shall meet the requirements of section 3.05.006(d)(2).

(g) If a protected tree has a trunk on a first property and roots and canopy that extend into a second property, the owner of the second property is required to obtain a tree removal permit for removal of the protected tree prior to performing any actions that constitute removal under 3.05.006(f) on the second property. For purposes of determining removal under this subsection for 3.05.006(f), damage to the root system is assessed within the area that is a number of feet in diameter from the outer edge of the tree trunk at 4.5 feet from ground based on a ratio of 1 foot for each inch of diameter of the tree trunk. If the actions by the owner of the second property as to the protected tree trigger a requirement for the owner of the first property to apply for a tree removal permit for the protected tree, the application review fee as to the protected tree on the first property is waived.

Sec. 3.05.010 – Development Application Requirements

(a) An application for a building permit must:

- (1) include a survey of all existing trees on the property;
- (2) include a grading and tree protection plan for protecting all protected trees that are not approved for removal;
- (3) demonstrate that the design will preserve the existing natural character of the landscape as to any protected trees not approved for removal; and
- (4) include a tree removal permit application with required fees for review of each proposed removal of a protected tree.

(b) The building official may not release or renew a building permit until the city arborist issues a tree removal permit for each protected tree proposed to be removed.

Sec. 3.05.011 – Administrative Variance

(a) The City Council may grant an administrative variance from the requirements of this division if the City Council determines by a simple majority that owing to special conditions pertaining to the affected property, literal enforcement of the provisions of this division will result in unnecessary hardship, and the granting of the variance will not be contrary to the public interest.

(b) In considering any proposed variance, the following rules shall be observed:

- (1) The applicant for the variance must present to the City Council a set of plans prepared by a certified arborist setting out the applicant's proposal and the nature of the proposed variance;
- (2) The proposed variance may not unreasonably affect any adjoining property or the general welfare of the community; and
- (3) The City Council must find that the applicant did not create the condition necessitating the variance.

(c) If the City Council grants a variance under this division, the city arborist may issue a tree removal permit with terms consistent with any terms and conditions of the granted variance.

Sec. 3.05.013 - Replacement Procedure

(a) Whenever replacement trees are required by the terms of this division, the owner shall submit to the city arborist for approval a replacement site plan showing the locations, species and sizes of

all replacement trees and vegetation for final approval by the city arborist. If during installation, the owner is unable to conform to the approved replacement site plan because conformance is not feasible due to subsurface conditions that could not reasonably have been foreseen that make the viability of the tree in the planned location unlikely, then the owner must submit an amended site plan to the city arborist within seven (7) days of the discovery of unforeseen subsurface conditions for approval by the city arborist. An amended site plan must provide for no fewer replacement trees or cumulative size of replacement trees than provided in the originally approved replacement plan.

(b) Installation of the replacement trees must be completed within the time period designated by the city arborist in the tree removal permit, however, in no event will the time period be longer than one (1) year, however this time period is abated while a property is under construction where replacement trees are required.

(c) The owner shall notify the city arborist upon completion of the installation. If more than one protected tree has been replaced, the city arborist may then inspect for compliance with the approved replacement plan.

(d) All replacement trees must survive at least three (3) years. The city arborist may contact the owner during this three (3) year period to arrange for a site visit by the city arborist in order to confirm the replacement trees have survived. Replacement trees that do not survive for 3 years must be removed and replaced with similar species and sized trees.

(e) The owner of property from which the removal of one or more protected trees was permitted shall arrange for the transferee(s) of such property to submit to the city secretary a written transfer to and assumption by such transferee(s) of the permit and all obligations of such permit with respect to required replacement trees, if all such obligations have not been satisfied at the time of transfer of the property.

Sec. 3.05.014 - Violations/Penalties

(a) It shall be an offense for a person:

1. to fail to perform an act required by the provisions of this division;
2. to fail to timely comply with any term of a permit issued pursuant to this division, including terms regarding the planting and maintenance of required replacement trees;
3. to hire, engage, or permit any person engaged in the business tree planting, maintenance, or removal to perform such services on property in the city without a permit issued by the city pursuant to Section 8.06.012 of this Code;
4. except as expressly allowed pursuant to this division, to remove or to cause the removal of a protected tree without first obtaining a permit therefor;
5. to transfer property from which the removal of a protected tree has been permitted if all obligations with respect to replacement trees pursuant to the permit for such removal are not then fulfilled unless the transferee of the property agrees in a writing submitted to the city secretary to assume such permit and all obligations with respect to the planting and maintenance of required replacement trees;
6. to fail to submit an application for a permit as required pursuant to subsection (d) of this Section or pursuant to subsection 3.05.008(b)(3); or
7. to fail to submit photographs or other documentation to demonstrate a requisite clear and immediate danger pursuant to Section 3.005.008(b)(3) in connection with an unpermitted removal of a protect tree.

(b) An offense shall constitute a class C misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00). An offense committed intentionally, knowingly, recklessly, or with criminal negligence shall be punishable by a fine not to exceed two thousand dollars (\$2000.00) per offense. Each protected tree removed in violation of this division shall constitute a separate offense, and a failure to plant and maintain each replacement tree shall constitute a separate offense. Each day a violation continues shall constitute a separate offense.

(c) The owner of affected property and each person who causes or directs another person to remove a protected tree without a permit shall immediately submit an application for a permit pursuant to this division, including a proposal for the provision of replacement tree(s) in compliance with this division.

(d) The building official shall issue a stop work order in connection with any permitted development of the property from which a protected tree is removed upon the occurrence of a violation of this division or any term of a permit issued pursuant to this division.

(e) No certificate of occupancy shall be issued for a building or other structure that is not then in compliance with any permit issued pursuant to this division for removal of a protected tree.

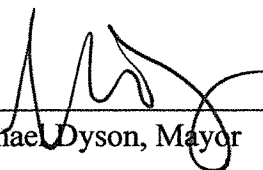
Sec. 3.05.015 – Requirements For Conduct Of Tree Removal Businesses

Any person engaged in the business of tree maintenance by pruning, trimming, or removing of trees in the city, whether a tree trimming business or a demolition business, shall comply with all applicable provisions of this division and shall secure an annual permit to do so from the city secretary.

SECTION 2. If any provision of this Ordinance is found by a court of competent jurisdiction to be void or unenforceable, such void or unenforceable provision shall be severed as though it never formed a part of this Ordinance, and all other provisions hereof shall remain in full force and effect.

SECTION 3. This Ordinance shall take effect and shall be in force immediately upon approval and adoption by the City Council.

PASSED AND APPROVED this 20th day of February, 2019.



Michael Dyson, Mayor

ATTEST:


Robyn Ryan, City Secretary