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SECTION 2. Code Amendment. The following sections of the Rollingwood Code of Ordinances are hereby amended as follows with ~~strike throughs~~ being deletions from the Code and underlines being additions to the Code:

The title to Chapter 107, Division 10, Subdivision 2 is hereby deleted and amended to read as follows:

Subdivision 2. Residential Landscape and Tree Canopy Management

Sec. 107-369. Purpose.

- (a) The tree code regulations protect the health, safety, and general welfare of the citizens of the city. 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) Because the city experiences frequent drought conditions, these regulations are also intended to encourage low water demanding landscapes (Xeriscapes) through the use of native and adapted low water use plants from the Austin Grow Green Guide found on the City of Austin Website. The planting of turfgrass on less than 50% of the total landscaped areas, with that turf grass preferably having summer dormancy capabilities such as Buffalo grass, Zoysia grass, or non-seeding varieties of Bermuda grass is also encouraged.
- (c) It is the intent of these regulations that site plan and project design will preserve the existing natural character of the landscape and the retention of protective trees as much as possible.
- ~~(b)~~(d) The sections within this subdivision 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.
- ~~(e)~~(e) For development situations, additional requirements to this subdivision are designated in [section] 107-376.

Sec. 107-370. Applicability.

This subdivision applies to property in the residential zoning district and to any other property to which section 107-341 of this Code does not apply.

Sec. 107-371. Definitions.

In this subdivision:

- (a) *Protected species* means:
 - (1) Ash, Texas

- 77 (2) Cypress, Bald
78 (3) Elm, American
79 (4) Elm, Cedar
80 (5) Madrone, Texas
81 (6) Maple, Bigtooth
82 (7) All Oaks
83 (8) Pecan
84 (9) Walnut, Arizona
85 (10) Walnut, Eastern Black
- 86 (b) *Protected tree* means a tree that has a trunk with a diameter of 12
87 inches or more, measured four and one-half feet above ground,
88 and is one of the protected species;
- 89 (c) *Replacement species* means:
- 90 (1) For trees planted within 20 feet of an above-ground
91 power, cable, or telephone line:
- 92 a. Anacacho Orchid Tree
93 b. Common Tree Senna
94 c. Crape Myrtle (dwarf)
95 d. Desert Willow
96 e. Evergreen Sumac
97 f. Eve's Necklace
98 g. Flameleaf Sumac
99 h. Goldenball Leadtree
100 i. Mexican Buckeye
101 j. Mexican Plum
102 k. Possumhaw Holly
103 l. Rough Leaf Dogwood
104 m. Texas Mountain Laurel
105 n. Texas Persimmon
106 o. Texas Pistache
107 p. Texas Redbud
108 q. Wax Myrtle
109 r. Yaupon Holly
110 s. Cherry Laurel
- 111 (2) For all other trees planted within a property, a protected
112 species.
- 113 (d) *Replacement tree* means:

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

(2) For the replacement species listed in subsection (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~~ five inches, which shall be maintained in a healthy condition after planting. The diameter of protected and replacement trees shall be measured four and one-half feet above the ground when planted.

(e) Heritage tree means a Protected Tree of a protected species, having a diameter of 24 inches or more, measured 4½ feet above natural grade. To determine the diameter of a multi-trunk tree, measure all the trunks; add the total diameter of the largest trunk to ½ the diameter of each additional trunk. A total diameter of 24" or higher for a multi-trunk tree is a Heritage tree.

(f) Critical root zone ("CRZ") means the area around and under a tree having a radius of one foot per inch of diameter from the trunk of the tree outwards and twenty-four inches in depth. For example, for a tree having a 10-inch diameter, the critical root zone is 10 feet out from the trunk and twenty-four inches deep.

~~(e)~~(g) Removal means an intentional 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:

a. 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; or

b. 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.

(4) Excessive pruning, including, but not limited to, pruning that exceeds 25 percent of the canopy of the tree.

~~(f)~~(h) Certified City arborist means an ISA certified arborist.

(i) City Development Officer means that individual designated by the City Administrator from time to time.

152 **Sec. 107-372. Administration.**

153 (a) A city arborist shall be appointed by the city council who shall
154 coordinate with the City Development Officer when determined
155 necessary to assist in promulgating forms for use under this
156 subdivision and to decide all applications for removal of a
157 protected tree.

158 ~~(b)~~ If an applicant requests a variance as permitted under this
159 subdivision, the city arborist shall direct the request to the city
160 council and make a recommendation to the city council whether
161 to approve the variance request.

162 ~~(e)(b)~~ The list of eligible protected tree species under subsection 107-
163 371(a) and the list of eligible replacement tree species under
164 [subsection] 107-371(c) may be supplemented by approval of the
165 city council, in consultation with the city arborist. Or as provided
166 by subsection (e).

167 ~~(d)(c)~~ All protected trees and heritage trees removed from a lot
168 shall ~~should~~ be replaced on that lot unless a written permission is
169 submitted to the City from an adjacent lot owner to replant on the
170 adjacent lot. An applicant may satisfy a tree replacement
171 requirement by planting the required replacement tree(s) on the
172 property affected by the protected tree removal, or on one or more
173 other property(s) approved by the arborist or other designated
174 agent of the city if:

175 ~~(1)~~ The benefit to residents of the city would be as great as
176 replacement on the property affected by the protected tree
177 removal; and

178 ~~(2)~~ The owner(s) of such other property(s) agree in writing to
179 maintain the replacement trees in a healthy condition and
180 replace same with like trees, as necessary as a result of a
181 death of such tree(s), for a period of not less than three
182 years.

183 ~~(e)~~ For purposes of subsections 107-372(e) and (d) the city and the
184 owner may consult with an academic organization, state agency,
185 nonprofit organization, or the city arborist to identify an area for
186 which tree planting will best address the science-based benefits
187 of trees and other reforestation needs of the municipality within
188 and outside of the city limits.

189 ~~(f)(d)~~ The city council shall provide for fees payable for review of
190 applications for permits and variances pursuant to this division.

191 **Sec. 107-373. Removal of protected trees.**

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

195 (1) During removal of protected trees the tree removal permit
196 shall be displayed on the construction board for the site ~~in~~
197 ~~present~~ or otherwise displayed on a sign within the first
198 five feet of the front yard ~~setback and if the house is not~~
199 ~~under construction the permit for tree removal shall be~~
200 ~~placed on the dashboard of the permitted vendor's vehicle.~~

201 (2) Removal of a Heritage tree is prohibited unless a Heritage
202 Tree Removal Special Exception is granted by the Board
203 of Adjustment upon a finding that: (i) all reasonable efforts
204 have been made to avoid removing the tree, (ii) the
205 location of the tree precludes all reasonable access to the
206 property or all reasonable use of the property, and (iii)
207 removal of the tree is not based on a condition caused by
208 the method or design chosen by the applicant to develop
209 the property. A Heritage Tree Removal Special Exception
210 provided for in this code will not be required for Heritage
211 Trees removed from the permitted building footprint area
212 but are subject to the tree removal permitting and
213 replacement regulations provide for in this Code.

such removal
is

214 (b) Emergency pruning or removal. Notwithstanding subsection 107-
215 373(a), a person may perform emergency pruning or removal of
216 a protected tree as follows:

217 (1) ~~When the condition or location of a protected tree presents~~
218 ~~a clear and immediate danger to a structure or to the health~~
219 ~~and safety of the public, the hazardous portion of the~~
220 ~~protected tree may be removed without first obtaining a~~
221 ~~required tree removal permit. Upon the report of a certified~~
222 ~~arborist hired by the property owner that a heritage tree is~~
223 ~~either: (i) dead; (ii) is an imminent hazard to life or~~
224 ~~property, and the hazard cannot reasonably be mitigated~~
225 ~~without removing the tree, in whole or in part; or (iii) is~~
226 ~~diseased and restoration to sound condition is not~~
227 ~~practicable or the disease may be transmitted to other trees~~
228 ~~and endanger their health. This report must be confirmed~~
229 ~~by the city arborist. The city administrator shall have the~~
230 ~~authority to determine whether such documentation is in~~
231 ~~order and may consider specific safety situations in light~~
232 ~~of potential hazards to life or property. In the case of an~~
233 ~~imminent hazard to life or property under subsection (ii).~~

documentation may be submitted within 72 hours after the action is taken.

(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~~ City Development Officer to determine if the ~~city arborist~~ City Development Officer 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 chapter 18, article V of this Code.

(3) Any person who prunes or removes a protected tree under the provisions of this subsection shall, within 14 days of such action or as soon as practicable if there is a coinciding declaration of a state of emergency in the city, apply for a tree removal permit providing for replacement trees as required by this subdivision. The application shall include photographs or other documentation to demonstrate the requisite clear and immediate danger. The ~~city arborist~~ City Development Officer 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 subdivision.

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

Sec. 107-374. Application for protected tree removal and tree removal permits.

(a) An applicant may request a tree removal permit application from the city through the City's application platform located on the City's website. ~~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 subdivision, 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. No tree removal permit shall be issued unless an approved building permit is in place, which includes a detailed building footprint. Any permit application for tree removal must be accompanied by documentation confirming the issuance of the building permit.

(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).

(g) A permit for removal of a protected tree expires on the earlier of either two years after its effective date, or upon removal of the protected tree 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 be revoked 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. 107-375. Conditions for approval.

(a) If ^athe protected tree is ^{removed from a required yard} located within a yard line and property line setback area and the total width of the setback area within the yard line and the property line is greater than ten feet or greater from the edge of a property, the protected tree shall be replaced with a total of three replacement trees that ~~may~~ ^{must} include a selection of replacement trees under subsections 107-371(d)(1) and (d)(2); ^{(a).} and shall include at least one replacement trees under subsection 107-371(d)(2).

- Each*
- removed from an area not within a required yard*
- (b) ~~If the protected tree is not located within an area specified in subsection 107-375(a), the protected tree shall be replaced by one replacement tree under either subsection 107-371(d)(1) or subsection 107-371(d)(2).~~
- (c) For protected trees removed from within 20 feet of an above-ground power, cable, or telephone line the species selected from Sec 107-371 (c) (1) ~~may~~ ^{shall} be used for replacement.
- (~~e~~)(d) ~~If the protected tree trunk straddles an area specified in subsection 107-375(a), the protected tree is deemed to be in the area specified in subsection 107-375(a) if more than half of the diameter of the tree is within the area specified in subsection 107-375(a). If a protected or heritage tree straddles the boundary between the yard and ~~buildable~~ ^{permitted building footprint} area, it shall be considered removed from the yard ~~and~~ ^{if} 25% or more of the trunk diameter is in the yard ~~area~~.~~
- (~~d~~)(e) If the ~~city arborist~~ City Development Officer determines under subsection 107-373(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 subsection 107-375(a), the city arborist may reduce the replacement tree requirement to one replacement tree under either subsection 107-371(d)(1) or subsection 107-371(d)(2).
- (~~e~~)(f) If the ~~city arborist~~ City Development Officer determines that an applicant provides sufficient 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 also not as a result of intentional bleaching, root cutting, or pruning more than 25 percent of the canopy, and that the certified arborist has documented at least two prior actions performed by the certified arborist within the previous three years to mitigate the condition, the ~~city arborist~~ City Development Officer may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (~~f~~)(g) If a protected tree is required to be removed under section 18-209, the ~~city arborist~~ City Development Officer may reduce or waive the replacement tree requirement for the protected tree and reduce or waive the tree replacement application fee.
- (~~g~~)(h) The mayor may act to waive the replacement tree requirement under this subsection 107-374(d) for a storm event, wildfire or

other calamity that causes widespread or costly damage to multiple protected trees throughout the city.

(h)(i) 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 subsection 107-375(b) is greater than seven protected trees, the number of replacement trees required under subsection 107-375(b) for a removal from such area is capped at seven replacement trees, at least three of which shall meet the requirements of subsection 107-371(d)(2).

(i)(i) If a protected tree has a trunk on a first property and CRZ 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 subsection 107-371(e) on the second property. For purposes of determining removal under this subsection for 107-371(e), 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 four and one-half feet from the ground based on a ratio of one 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.

(k) ~~Replacement of a Heritage Tree removed from a yard area of a permitted building footprint area must be replaced with one tree 5 inches in diameter, or more, for every 12 inches in diameter of the removed tree. For example: 24 inches = 2 five-inch diameter trees, 36 inches = 3 trees, etc. to be replaced.~~ An exception to these mitigation requirements may be granted by the City Development Officer, after consulting with the City Arborist, and with the approval of the Zoning Board of Adjustment, if the applicant demonstrates: (1) the existing tree canopy would prohibit the growth of these replacement tree(s); or (2) the required replacement trees to be installed would have to be planted under the canopy of an existing tree.

Sec. 107-376. Development application requirements.

(a) An application for a building permit must:

- (1) Include a tree survey and protection plan of all existing trees on the property that are at least 12 inches in diameter measured four and one-half feet above the ground, including an indication of the CRZ of these trees.

401 (2) Include a grading and tree protection plan for protecting
402 all protected trees that are not approved for removal; The
403 protection plan submitted for these trees must include
404 actions necessary for the best chance of survival of these
405 protected trees, including adequate watering before,
406 during and after construction until a certificate of
407 occupancy is granted.

408 (3) Demonstrate that the design will preserve the existing
409 natural character of the landscape as to any protected trees
410 not approved for removal; and

411 (4) Include a tree removal permit application with required
412 fees for review of each proposed removal of a protected
413 tree.

414 (b) ~~The building official~~ City Development Officer may not release
415 or renew a building permit until ~~the city arborist issues a tree~~
416 ~~removal permit for each protected tree proposed to be removed~~
417 ~~has been submitted. While the tree removal permit and the~~
418 ~~building permit may be processed and approved concurrently, the~~
419 ~~tree removal permit shall not be approved prior to approval of the~~
420 ~~building permit, including the approval of the building footprint.~~

421 **Sec. 107-377. Administrative variance.**

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

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

430 ~~(1) The applicant for the variance must present to the city council a~~
431 ~~set of plans prepared by a certified arborist setting out the~~
432 ~~applicant's proposal and the nature of the proposed variance;~~

433 ~~(2) The proposed variance may not unreasonably affect any~~
434 ~~adjoining property or the general welfare of the community; and~~

435 ~~(3) The city council must find that the applicant did not create the~~
436 ~~condition necessitating the variance.~~

437 ~~(e) If the city council grants a variance under this subdivision, the~~
438 ~~city arborist may issue a tree removal permit with terms~~
439 ~~consistent with any terms and conditions of the granted variance.~~

440 **Sec. 107-3778. Replacement procedure.**

- 441 (a) Whenever replacement trees are required by the terms of this
442 subdivision, the owner shall submit to the ~~city arborist~~ City
443 Development Officer for approval a replacement site plan
444 showing the locations, species and sizes of all replacement trees
445 and vegetation for final approval by the ~~city arborist~~ City
446 Development Officer. If during installation, the owner is unable
447 to conform to the approved replacement site plan because
448 conformance is not feasible due to subsurface conditions that
449 could not reasonably have been foreseen that make the viability
450 of the tree in the planned location unlikely, then the owner must
451 submit an amended site plan to the ~~city arborist~~ City
452 Development Officer within seven days of the discovery of
453 unforeseen subsurface conditions for approval by the ~~city arborist~~
454 City. An amended site plan must provide for no fewer
455 replacement trees or cumulative size of replacement trees than
456 provided in the originally approved replacement plan.
- 457 (b) Installation of the replacement trees must be completed within
458 the time period designated by the ~~city arborist~~ City Development
459 Officer in the tree removal permit, however, in no event will the
460 time period be longer than one year, however this time period is
461 abated while a property is under construction where replacement
462 trees are required.
- 463 (c) The owner shall notify the ~~city arborist~~ City Development Officer
464 upon completion of the installation. If more than one protected
465 tree has been replaced, the city arborist may then inspect for
466 compliance with the approved replacement plan.
- 467 (d) All replacement trees must survive at least three years. The City
468 Development Officer shall track all replacement trees, so that at
469 three years post planting, their survival and health can be
470 assessed, consulting with an arborist if necessary. The ~~city~~
471 ~~arborist~~ City Development Officer may contact the owner during
472 this three year period to arrange for a site visit ~~by the city arborist~~
473 in order to confirm the replacement trees have survived.
474 Replacement trees that do not survive for three years must be
475 removed and replaced with similar species and sized trees.
- 476 (e) The owner of property from which the removal of one or more
477 protected trees was permitted shall arrange for the transferee(s)
478 of such property to submit to the city secretary a written transfer
479 to and assumption by such transferee(s) of the permit and all
480 obligations of such permit with respect to required replacement
481 trees, if all such obligations have not been satisfied at the time of
482 transfer of the property.

483 **Sec. 107-3789. Violations/penalties.**

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

- 485 (1) To fail to perform an act required by the provisions of this
486 subdivision;
- 487 (2) To fail to timely comply with any term of a permit issued
488 pursuant to this division, including terms regarding the
489 planting and maintenance of required replacement trees;
- 490 (3) To hire, engage, or permit any person engaged in the
491 business tree planting, maintenance, or removal to perform
492 such services on property in the city without a permit
493 issued by the city pursuant to section 18-217 of this Code;
- 494 (4) Except as expressly allowed pursuant to this subdivision,
495 to remove or to cause the removal of a protected or heritage
496 tree without first obtaining a permit therefor;
- 497 (5) To transfer property from which the removal of a protected
498 heritage tree has been permitted if all obligations with
499 respect to replacement trees pursuant to the permit for such
500 removal are not then fulfilled unless the transferee of the
501 property agrees in a writing submitted to the city secretary
502 to assume such permit and all obligations with respect to
503 the planting and maintenance of required replacement
504 trees;
- 505 (6) To fail to submit an application for a permit as required
506 pursuant to subsection (b) of this section or pursuant to
507 subsection 107-373(b)(3); or
- 508 (7) To fail to submit photographs or other documentation to
509 demonstrate a requisite clear and immediate danger
510 pursuant to subsection 107-373(b)(3) in connection with
511 an unpermitted removal of a protected or heritage tree.

512 (b) An offense shall constitute a Class C misdemeanor punishable by
513 a fine not to exceed \$500.00. ~~An offense committed intentionally,~~
514 ~~knowingly, recklessly, or with criminal negligence shall be~~
515 ~~punishable by a fine not to exceed \$2000.00 per offense.~~ Each
516 protected or heritage tree removed in violation of this division
517 shall constitute a separate offense, and a failure to plant and
518 maintain each replacement tree shall constitute a separate
519 offense. Each day a violation continues shall constitute a separate
520 offense.

521 (c) The owner of affected property and each person who causes or
522 directs another person to remove a protected or heritage tree
523 without a permit shall immediately submit an application for a
524 permit pursuant to this subdivision, including a proposal for the

525 provision of replacement tree(s) in compliance with this
526 subdivision.

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

532 (e) No certificate of occupancy shall be issued for a building or other
533 structure that is not then in compliance with any permit issued
534 pursuant to this subdivision for removal of a protected tree.
535

536 **SECTION 3.** All provisions of the ordinances of the City of Rollingwood in conflict with
537 the provisions of this ordinance are hereby repealed to the extent of such conflict, and all
538 other provisions of the ordinances of the City of Rollingwood not in conflict with the
539 provisions of this ordinance shall remain in full force and effect.

540 **SECTION 4.** Should any sentence, paragraph, sub-article, clause, phrase or section of this
541 ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not
542 affect the validity of this ordinance as a whole, or any part or provision thereof other than
543 the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity
544 of the Code of Ordinances as a whole.

545 **SECTION 5.** This ordinance shall take effect immediately from and after its passage and
546 the publication of the caption, as the law and charter in such cases provide.

547 **APPROVED, PASSED AND ADOPTED** by the City Council of the City of
548 Rollingwood, Texas, on the _____ day of _____, 2024
549

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554

Gavin Massingill, Mayor

555 ATTEST:

556

557

558 _____
Makayla Rodriguez, City Secretary

559