



CITY OF ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING AGENDA

Wednesday, April 01, 2026

Notice is hereby given that the Planning and Zoning Commission of the City of Rollingwood, Texas will hold a meeting, open to the public, in the Municipal Building at 403 Nixon Drive in Rollingwood, Texas on April 01, 2026 at 6:00 PM. Members of the public and the Planning and Zoning Commission may participate in the meeting virtually, as long as a quorum of the Planning and Zoning Commission and the presiding officer are physically present at the Municipal Building, in accordance with the Texas Open Meetings Act. The public may watch this meeting live and have the opportunity to comment via audio devices at the link below. The public may also participate in this meeting by dialing one of the toll-free numbers below and entering the meeting ID and Passcode.

Link: <https://us02web.zoom.us/j/5307372193?pwd=QmNUbmZBQ1lwUINjNmK5RnJreIRFUT09>

Toll-Free Numbers: (833) 548-0276 or (833) 548-0282

Meeting ID: 530 737 2193

Password: 9fryms

The public will be permitted to offer public comments via their audio devices when logged in to the meeting or telephonically by calling in as provided by the agenda and as permitted by the presiding officer during the meeting. If a member of the public is having difficulties accessing the public meeting, they can contact the city at citysecretary@rollingwoodtx.gov. Written questions or comments may be submitted up to two hours before the meeting. A video recording of the meeting will be made and will be posted to the City's website and available to the public in accordance with the Texas Public Information Act upon written request.

CALL ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING TO ORDER

1. Roll Call

PUBLIC COMMENTS

Citizens wishing to address the Planning and Zoning Commission for items not on the agenda will be received at this time. Please limit comments to 3 minutes. In accordance with the Open Meetings Act, the Planning and Zoning Commission is restricted from discussing or taking action on items not listed on the agenda.

Citizens who wish to address the Planning and Zoning Commission with regard to matters on the agenda will be received at the time the item is considered.

CONSENT AGENDA

All Consent Agenda items listed are considered to be routine by the Planning and Zoning Commission and may be enacted by one (1) motion. There will be no separate discussion of Consent Agenda items unless a Board Member has requested that the item be discussed, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the Regular Agenda.

- 2. Discussion and possible action on the minutes from the March 4, 2026, Planning and Zoning Commission meeting

REGULAR AGENDA

- 3. Discussion and direction regarding inconsistencies within Chapter 107 of the Rollingwood Code of Ordinances
- 4. Discussion and possible action on the creation of a subcommittee to review tree protection standards within Chapter 107 of the Rollingwood Code of Ordinances

ADJOURNMENT OF MEETING

CERTIFICATION OF POSTING

I hereby certify that the above Notice of Meeting was posted on the bulletin board at the Rollingwood Municipal Building, in Rollingwood, Texas and to the City website at www.rollingwoodtx.gov prior to 5:00 P.M. on March 26, 2026.

Nikki Stautzenberger, Development Services Manager

NOTICE -

The City of Rollingwood is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact the City Secretary, at (512) 327-1838 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

The Planning and Zoning Commission will announce that it will go into executive session, if necessary, to deliberate any matter listed on this agenda for which an exception to open meetings requirements permits such closed deliberation, including but not limited to consultation with the city's attorney(s) pursuant to Texas Government Code section 551.071, as announced at the time of the closed session.

Consultation with legal counsel pursuant to section 551.071 of the Texas Government Code;
discussion of personnel matters pursuant to section 551.074 of the Texas Government Code;
real estate acquisition pursuant to section 551.072 of the Texas Government Code;
prospective gifts pursuant to section 551.073 of the Texas Government Code;
security personnel and device pursuant to section 551.076 of the Texas Government Code;
and/or economic development pursuant to section 551.087 of the Texas Government Code.
Action, if any, will be taken in open session.



CITY OF ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING MINUTES

Wednesday, March 04, 2026

The Planning and Zoning Commission of the City of Rollingwood, Texas held a meeting, open to the public, in the Municipal Building at 403 Nixon Drive in Rollingwood, Texas on March 4, 2026. Members of the public and the Planning and Zoning Commission were able to participate in the meeting virtually, as long as a quorum of the Planning and Zoning Commission and the presiding officer were physically present at the Municipal Building, in accordance with the Texas Open Meetings Act. A video recording of the meeting was made and will be posted to the City's website and available to the public in accordance with the Texas Public Information Act upon written request.

CALL ROLLINGWOOD PLANNING AND ZONING COMMISSION MEETING TO ORDER

1. Roll Call

Chair Dave Bench called the meeting to order at 6:00 p.m.

Present Members: Chair Dave Bench, Jay van Bavel, Jerry Fleming, Michael Hall, Genie Nyer, and Tony Stein

Also Present: City Administrator Alun Thomas, Development Services Manager Nikki Stautzenberger, and City Attorney Natalie Thamm

PUBLIC COMMENTS

There were no public comments.

CONSENT AGENDA

2. Discussion and possible action on the minutes from the January 7, 2026 Planning and Zoning Commission meeting

Jan van Bavel moved to approve the meeting minutes. Genie Nyer seconded the motion. The motion carried with 6 in favor and 0 against.

REGULAR AGENDA

- 3. Discussion regarding Chapter 107 of the Rollingwood Code of Ordinances related to changes initiated by City Council or Commission

Chair Dave Bench introduced the item, noting that the intention of the item is to allow the members of the Commission the opportunity to understand the Commission’s role, the Council’s role, and the interactions between the two as it relates to matters of planning and zoning.

City Attorney Natalie Thamm said that City Council has the authority to take up an issue and assign the Planning and Zoning Commission work. She explained that Council cannot act on matters alone; for example, text amendments must be considered by the Commission, which then has a statutory obligation to produce a preliminary report and a recommendation to Council on how it should act. The Commission is subservient to Council, but Council cannot act unilaterally. Either the Council or the Commission can initiate items, but the Council cannot act on zoning issues without receiving a recommendation from the Commission after the Commission has held a public hearing on the topic.

Ms. Thamm addressed the question of whether a supermajority of Council is necessary to take no action on a recommendation that it receives from the Commission. She said that Council has the authority to not take action on a recommendation. Additionally, the Commission has the authority to consider an item before it has been through the formal public notice process, as long as that consideration pertains to whether the Commission would like to begin such a process.

With regard to the recent playhouses and playscapes item, the recommendation for which was not formally acted upon by Council, Development Services Manager Nikki Stautzenberger informed the Commission that Mayor Pro Tem Sara Hutson and Councilmember Brook Brown are currently working on whether or how to bring back a recommendation on the topic to Council that could then in turn be sent to the Commission for formal consideration. Ms. Thamm addressed questions from the Commission regarding the issue.

- 4. Discussion and possible action regarding inconsistencies within Chapter 107 of the Rollingwood Code of Ordinances related to residential fences

Chair Dave Bench said that Commissioner Jerry Fleming found that fence requirements appear in multiple parts of the City’s Code of Ordinances, and sought clarification from staff on why that would be the case. City Attorney Natalie Thamm said that sometimes ordinances are placed in what might appear to be an unusual place in the code from a stylistic approach, but said that making changes to correct those stylistic choices by renumbering sections or rearranging text without changing the meaning would still need to go through the formal text amendment process.

Following a brief discussion, it was the consensus of the Commission that a subcommittee or working group should examine the Code for such inconsistencies, with the goal of correcting them.

Genie Nyer moved to establish a working group to examine the code for any inconsistencies and questionable details found in Code Section 107, to come back to the full Planning and Zoning Commission with recommendations to discuss possible changes to send to Council, with that working group consisting of Jerry Fleming, Genie Nyer, and Dave Bench. Jerry Fleming seconded the motion. The motion carried with 6 in favor and 0 against.

ADJOURNMENT OF MEETING

The meeting was adjourned at 6:45 p.m.

Minutes adopted on the _____ day of _____, 2026.

Dave Bench, Chair

ATTEST:

Lindsay Saenz, Assistant to the City Administrator

AGENDA ITEM SUMMARY SHEET

City of Rollingwood

Meeting Date: April 1, 2026

Submitted By:

Staff

Agenda Item:

Discussion and direction regarding inconsistencies within Chapter 107 of the Rollingwood Code of Ordinances

Description:

At the March 4, 2026, Planning and Zoning Commission meeting, Chair Dave Bench noted that Commissioner Jerry Fleming observed that fence requirements appear in multiple sections of the City's Code of Ordinances and requested clarification from staff. City Attorney Natalie Thamm explained that, while some provisions may appear to be located in unusual sections from a stylistic standpoint, any revisions to reorganize or renumber code provisions, without changing their substantive meaning, must still follow the formal text amendment process.

Following the discussion, the Commission reached consensus to establish a subcommittee or working group to review the Code for such inconsistencies and identify potential corrections.

Genie Nyer moved to establish a working group to examine the code for any inconsistencies and questionable details found in Code Section 107, to come back to the full Planning and Zoning Commission with recommendations to discuss possible changes to send to Council, with that working group consisting of Jerry Fleming, Genie Nyer, and Dave Bench. Jerry Fleming seconded the motion. The motion carried with 6 in favor and 0 against.

Action Requested:

Discuss the subcommittee's identified inconsistencies in Chapter 107 of the Rollingwood Code of Ordinances and provide direction on progress.

Fiscal Impacts:

No fiscal impacts

Attachments:

No attachments

Sec. 101-256. Tree protection requirements.

- (a) Tree root protection shall be installed prior to the start of any site work, including demolition or site preparation, and be maintained continuously throughout the project. Tree protection shall be removed at the end of the project after all construction and final grading is complete, but before final inspection. Any premature removal or failure of tree protection can lead to root damage and require remedial tree care.
- (b) Fencing is the primary method of tree protection and is intended to prevent access to the Critical Root Zone (CRZ). Tree fencing shall have a minimum height of five feet. Fencing shall be chain link installed on steel t-posts with a maximum spacing of ten feet between posts. Fencing shall be installed around or beyond the CRZ of all preserved trees or any natural areas designated for preservation. "Critical Root Zone" as used in this section has the same definition as used in Section 107-371 for the residential zoning district or Section 107-386 for zoning districts other than the residential district.
- (c) Mulch is required for any section of the CRZ that is not protected by fencing or under existing hardscape and has not been approved for impacts (such as building footprint or driveway). Mulch used for tree protection shall be any natural wood type. Rough single grind mulch, which resists compaction better than double grind and is usually less expensive is preferred, but any natural wood type is acceptable. Dyed mulch or mulch made from non-biological material such as rubber or stone shall not be used as tree protection.
- (d) Mulch shall be installed to a minimum depth of eight inches and maximum of 12 inches. Mulch shall be replenished as required and shall not be piled against the tree trunk.

(Ord. No. 2024-11-20-09, § 2, 11-20-2024)

Sec. 107-3. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory building or structure means a building or structure which does not share a common roof or common wall, including, but not limited to, a toolhouse, home workshop, greenhouse, garage, carport, children's playhouse, or swimming pool house, which:

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- (1) Is located on the same lot as a dwelling;
- (2) Is subordinate in area to the dwelling and is used for a purpose customarily incidental to the dwelling;
- (3) Is detached from the dwelling except that a connected foundation or walkway may exist with the dwelling;
- (4) Does not provide complete independent living facilities for one or more persons which include permanent provisions for living, sleeping, and sanitation facilities; and
- (5) Is not used for lease or rental, or for a commercial purpose other than a home occupation by a resident of the main dwelling.

Addition means a construction project that causes an existing structure to increase in total square footage.

Alley means a minor public or private right-of-way which:

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- (1) Is used primarily for vehicular traffic to the rear or side of properties which abut a public street; and
- (2) Affords secondary means of access to abutting property.

Amenity means an indoor area or an outdoor area located anywhere on a lot, or the roof of a structure, or any other building including, but not limited to, pools, sport courts, patio areas, outdoor kitchens, grills, landscaped areas, and areas of decking, decorative paving or other similar surface, used for recreational purposes.

Block means a parcel or tract of land entirely surrounded by streets, and occupied by or intended for occupancy by buildings or structures.

Board means the board of adjustment of the city.

Building means any structure which is:

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- (1) Permanently affixed to the land;
- (2) Has a roof supported by columns or walls; and
- (3) Is built for the enclosure, shelter or protection of persons, animals or property of any kind.

Building footprint means the horizontal surface area measured by taking the aggregate outside horizontal dimensions of the building and covered structures, including garages, carports, and covered porches and/or decks. Uncovered decks are not included in the measurement.

Building height, as used in chapter 107, division 2, Residential (R) Zoning District, means the vertical distance from the Original Native Ground Surface or finished grade, whichever is lower, to the highest point directly above.

Building height, nonresidential, means the vertical distance from the lowest finished floor elevation (including a garage floor) to the highest part of the following: the coping of a flat roof; the deck line of a mansard roof; or the gable of a pitched or hipped roof, where, due to topographical or other conditions, the lowest finished floor elevation of a building differs from one part to another, the maximum permissible height shall be computed separately for each portion of such building containing a differing lowest finished floor elevation. If the lowest finished floor elevation is more than four feet directly above the point where the foundation intersects the natural

grade, then the vertical distance must be measured from a point that is four feet directly above the point where the foundation intersects the natural grade to the highest point described above.

Certificate of occupancy means a document issued by the building official which:

- (1) Certifies that the construction of a building or structure or use of premises complies with the requirements of this article and other applicable city ordinances; and
- (2) Authorizes the occupancy or use of the premises for which the certificate is issued.

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Commercial district means the commercial district (C).

Commission means the planning and zoning commission of the city.

Demolition means the taking down of a building while carefully preserving valuable elements for reuse. The term "demolition" may also include the total and complete deconstruction and removal of a building and its foundation to make room for the construction of a new building.

District means a zoned section of the city for which regulations governing the area, height or use of buildings and premises are uniform for each type and class of structure.

Dwelling.

- (1) The term "dwelling" means a building which:
 - a. Is designed and constructed for occupancy as a residence;
 - b. Includes bathroom facilities;
 - c. Includes facilities for food preparation and sleeping; and
 - d. Is not attached to any other building by any means.
- (2) A dwelling's extent consists of all aspects of the structure that share:
 - a. A common framed, decked, and sheathed roof; and
 - b. A common concrete slab-on-grade or wood framed and decked floor.

Easement means a privilege, or right of use or enjoyment, granted on, above, under or across a particular tract of land by one party to another.

Fence means a fixed-in-place physical barrier, including a wall, that wholly or partially encloses, screens, separates, or establishes a border for a portion of real property (e.g., yard or field) and is commonly used to control access, to confine, or to mark a boundary. Unless otherwise specifically provided, the term "fence" does not include temporary barriers, including, but not limited to, silt fencing or other erosion controls, or temporary construction barriers.

Front-yard fence means that portion of a fence that extends beyond the front foundation line of the primary residential structure located on the property toward the front building setback line (or for unplatted property, toward the street from which the front building setback line would be measured). In the case of undeveloped property, a front-yard fence is:

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- (1) The portion of a fence located closer to a street fronting the property than the front setback line of a platted lot; or
- (2) For an unplatted property, the portion of a fence located closer to a street than the front setback line that would be required by this Code if the property were being platted pursuant to the regulations of this Code at the time of installation of such fence.

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Garage, detached means an accessory building, separated and independent of the main building on a lot, designed to shelter motor vehicles.

Gate means a movable door or obstruction that closes an opening in a wall, fence, or other barrier.

Grade means the elevation of the original or finished surface of the ground, paving or sidewalk within the area between setback lines of the lot.

Greenbelt means an open area not occupied by any structures or impervious surfaces which:

- (1) Is left undisturbed in its natural state; or
- (2) Is landscaped as required under the city's landscaping regulations; provided that the width of all greenbelts shall be maintained as required under this article, notwithstanding the provisions of the city's landscape ordinance.

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Ground floor area means the floor area of a building or structure measured by taking the aggregate outside horizontal dimensions of the building or structure, at foundation level, excluding the floor area of garages, basements, or open or screened porches.

Home occupation means an activity or occupation, including, but not limited to, an accountant, engineer, architect, music teacher, tailor, artist, or activity associated with management of property or assets, which is performed in a dwelling for gain, whether or not paid or provided by a third party, and which:

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- (1) Is conducted by a members of the family residing in the dwelling;
- (2) Is conducted as a use that is clearly incidental and secondary to the use of the dwelling for ordinary residential purposes;
- (3) Does not require structural alterations in the dwelling or the installation of machinery or equipment other than that customary to ordinary household activities;
- (4) Does not involve the display of a sign to advertise the occupation;
- (5) Is not detrimental or injurious to adjoining property by reason of the creation of noise or other obnoxious conditions, such as the emission of odor or generation of light, smoke or other objectionable conditions;
- (6) Does not generate a substantial increase in motor vehicle traffic; and
- (7) Is conducted in the single-family residence where the operator of the home occupation resides.

Impervious cover means any area where the natural absorption of runoff water by the land is prevented by site development.

Job trailer means an enclosed building or structure, including a mobile or relocatable office unit, the use of which is incidental to construction work being done under a valid building permit on the premises, which:

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- (1) Is erected on a temporary foundation, such as skids or plywood;
- (2) Is located on the same lot as an existing main building or a main building under construction;
- (3) Does not contain plumbing or sanitation facilities;
- (4) Is not connected to any city water, wastewater or gas utility service; and
- (5) Is removed upon completion or cessation of the activity for which the structure was erected.

Lot means a portion of a subdivision or other parcel of land designated as a unit for transfer of ownership or for development.

Lot, area of, means the total area encompassed within the lines of a lot, excluding any street or alley rights-of-way.

Lot, corner, means a lot located at the angle of two intersecting streets.

Lot line means the boundary of a lot.

Lot line, front, means the front line of a lot, which is also the right-of-way line of the street abutting such lot.

Lot line, rear, means the lot line most nearly opposite and most distant from the front lot line.

Lot line, side, means any lot line other than a front or rear lot line.

Main building means a building (not including an accessory building) within which is conducted the principal use of the site upon which the building is located. In a residential district, all dwellings are deemed to be main buildings.

Masonry means clay brick, concrete, hollow clay tile, natural stone, stucco, marble, or any combination of these materials, on the exterior surface of a building.

Mayor means the mayor of the city.

Mechanical equipment means heating and air conditioning units, pool equipment, and household generators.

Mirrored glass means glass with a reflectivity factor of 20 percent or greater.

Motor vehicle means a vehicle, motor home, trailer, boat, mobile home, camper, travel trailer, bus, tractor, commercial vehicle, truck, recreational vehicle or other vehicle that either has its own motive power, including a sailboat, or is mounted on or towed by another vehicle.

New construction means a construction project that begins on a vacant lot or on a lot in which the walls and foundation of a preexisting building and any related structures have been demolished completely and removed from the lot.

Nonconforming building or structure means a building or structure, the size, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which they are located.

Nonconforming lot means a lot, the area, dimensions or location of which were lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

Nonconforming use means a use or activity which was lawful prior to the date of adoption of the ordinance from which this article is derived or amendments thereto, but which fails by reason of such adoption or amendments to conform to the regulations of the district in which it is located.

Original native ground surface, as used in chapter 107, division 2, Residential (R) Zoning District, means the existing grade on a lot prior to development of the new residential building, as may be shown on a certified topographic survey of the property.

Parallel plane, as used in chapter 107, division 2, Residential (R) Zoning District, is an imaginary plane that is 35 feet above and parallel to the original native ground surface.

Parking space means a paved area of at least 180 square feet (measuring not less than nine feet wide and not less than 18 feet in length), enclosed or unenclosed, having a paved driveway which connects the parking space with a street or alley and which permits ingress or egress of motor vehicles. The term "parking space" does not include a driveway, aisle or any area on a public street.

Personal wireless telephone service facility means a tower and related fixtures and equipment for the provision of wireless cellular telephone signals by one or more commercial operators of wireless telephone services.

Planned unit development means a tract of land developed as a single entity, pursuant to a unified site design which makes provisions for common open spaces and variegated building types and land uses, and which provides for the calculation of densities over the entire development, rather than on an individual lot-by-lot basis.

Premises means land, together with any buildings or structures occupying it.

Public view means the view as seen from any private property in a residential district or public street within the city.

Reconstruction means a construction project that constitutes the rebuilding, using the original building footprint, of a building, or structure, whether a dwelling or other that is damaged or destroyed by fire or other accidental or natural means.

Remodel means any addition or alteration to an existing building or its foundation or any component thereof, including, but not limited to, the addition or alteration of any porch, deck, or garage.

Residence, resident or reside means to have residence in, to be a resident of, or to reside in a dwelling, the dwelling must be the place where the person primarily lives, sleeps, bathes, and maintains personal possessions such as clothing.

Residential plot plan or residential site plan means a site plan drawn to a scale of one inch to 50 feet depicting existing and proposed contours in two-foot elevations on the property, the existing and proposed drainage patterns and the 50- and 100-year floodplains if they exist on the property.

Resubdivision means the division of an existing subdivision, together with any change of lot sizes therein, or with the relocation of any street lines.

Retaining wall means any fence or wall built or designed to retain or restrain lateral forces of soil or other materials, said materials being similar in height to the height of the soil or other materials being retained.

Setback means the minimum horizontal distance between a lot line and the closest wall or face of a building or foundation or projection thereof, excluding uncovered steps or unenclosed balconies or porches, or cantilevered roof cornices, eaves, or facias, located on the lot.

Setback line means a line within a lot, which is parallel to and is measured from a corresponding lot line, which governs the placement of structures and uses on the lot.

Special exception means a use that is not permitted in a particular district under this article, but which is permitted in such district following approval by the board of adjustment, upon a showing that the use will comply with all of the conditions prescribed by the board for such use.

Special use means a use that may be authorized by the city council in the district in which it is allowed.

Sport court means an installed hardscape surface or other compacted ground material utilized in connection with a flat game court structure for play. This definition is to specifically include, but not be limited to basketball courts, tennis courts, hockey rinks, batting cages, racquetball/handball/pickleball courts, and other similar facilities. These game court areas may or may not include a combination of fencing, netting, or boards for the purposes of their use.

Square feet of floor space means the square footage of a building computed from the exterior perimeter footprint of each story of such building, or portion thereof. Provided, that when the term "square feet of floor" is used with reference to a dwelling, the computation of square footage shall not include attached garages, attics, basements or porches. Provided further, that when the term "square feet of floor" is used with reference to a building that is not a dwelling, the computation shall include, but not be limited to, atriums, vents, elevator shafts, exterior balconies and porches, mechanical and storage rooms, elevator lobbies, halls and corridors, but shall exclude courtyards.

Story means that portion of a building, other than a basement, open or screened porch, attached garage or attic, which is included between the surface of one floor and the surface of the floor next above it, or, if there is only one floor, the term "story" means the space between such floor and the ceiling above it.

Street means a public thoroughfare, other than an alley, which has been improved and dedicated for use as a roadway and provides principal vehicular and pedestrian access to adjacent properties.

Structure means anything constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground, including, but not limited to, signs, and excepting utility poles, berms, fences, mailboxes and retaining walls.

Subdivision means a division of any tract of land situated within the city limits, or within one-half mile of such limits, in two or more parts for the purpose of laying out any subdivision of any tract of land, or for laying out suburban lots or building lots, or any lots, streets, alleys or parts or other portions intended for public use or the use of purchasers or owners of lots fronting thereon or adjacent thereto. The term "subdivision" includes resubdivision. The term "subdivision" includes those parcels being platted in accordance with section 105-23(b).

Subdivision sales office means a temporary building or structure, including a mobile or relocatable office unit, used as an office to sell property in a new or developing subdivision tract.

Temporary building means an enclosed building or structure which is erected on a temporary foundation, such as skids; is located on the same lot as an existing main building or a main building under construction; does not contain plumbing or sanitation facilities; and is not connected to any electrical, water, wastewater or gas utility service.

Use of property means the purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied or maintained.

Use, principal, means the main use of land or buildings as distinguished from the subordinate or accessory use of such land or buildings.

Variance means an authorization by the board of adjustment granting specific relief from the literal enforcement of the provisions of this chapter.

Veterinary services means an establishment which provides care for small domestic animals for treatment; but excluding overnight convalescence boarding, pet grooming facilities, animal training centers and clubs, and facilities where animals are boarded during the day or overnight.

Wall means a masonry structure enclosing real property (e.g., a yard or field).

Yard means an unoccupied space on a lot which:

- (1) Is open and unobstructed from the ground upward to the sky except for fencing, walls, and those encroachments expressly allowed by this chapter;
- (2) Extends between a main building and the lines of the lot upon which the main building is located; and
- (3) Has a depth between the front, side or rear lot lines and the main buildings as required for the district in which the lot is located.

Yard, front, means a yard which abuts the addressed street of the lot, is located between the main building on a lot and the street easement or front line of the lot, and extends across the front of a lot between the side lot lines.

Yard, rear, means a yard which is located between the main building on a lot and the rear line of the lot, and extends across the rear of the lot between the side lot lines.

Yard, side, means a yard which is located between the main building on a lot and the side lines of the lot, and extends across the side of a lot between the front yard and the rear yard.

(Code 1987, ch. 11, subch. G, art. II, § 1; Code 1995, § 14.02.051; Ord. No. 2011-11-16(A), 11-16-2011; Ord. No. 2012-10-17(A), § 1, 10-17-2012; Ord. No. 2015-12-16(B), § 1, 12-16-2015; Ord. No. 2017-01-18, 1-18-2017; Ord. No. 2017-09-13, 9-13-2017; Ord. No. 2018-02-21(B), §§ 1, 2, 2-21-2018; Ord. No. 2018-09-19(A)), § 1, 9-19-2018; Ord. No. 2019-08-21(A), § 2, 8-21-2019; Ord. No. 2019-10-16-05, § 2, 10-16-2019; Ord. No. 2021-10-20-06, § 2, 10-20-2021; Ord. No. 2023-04-05-08, § 2, 4-5-2023; Ord. No. 2023-05-17-07, § 2, 5-17-2023; Ord. No. 2023-11-15-03, § 2, 11-15-2023; Ord. No. 2024-06-12-07, § 2(Exh. A), 6-12-2024; Ord. No. 2024-08-21-04, § 2, 8-21-2024; Ord. No. 2025-03-19-09, § 2, 3-19-2025; Ord. No. 2025-05-21-07, § 2, 5-21-2025; Ord. No. 2025-09-17-23, § 2, 9-17-2025)

Sec. 107-34. Fences.

- (a) Except as otherwise provided in this section, no front-yard fence may be erected or maintained.
- (b) A front-yard fence complying with the criteria provided in this subsection (b) of this section is allowed on property in a residential zoning district. The following criteria shall apply to such a fence:
- (1) The height shall not exceed three feet measured perpendicular from the adjacent finish grade;
 - (2) Piers or posts may exceed the maximum height and fencing adjacent to the pier or post by four inches;
 - (3) On sloped lots, to accommodate variations in elevation of the ground beneath a fence segment between two piers or posts, a fence may exceed the maximum height by up to six inches, provided that the average height of such fence segment does not exceed the maximum height;
 - (4) The fence shall be constructed of such materials or in a manner to allow for an average of 80 percent visibility through the fence;
 - (5) All fence components shall be a minimum of 15 feet from the curb, or edge of the street pavement where there is no curb;
 - (6) The fence shall have columns, posts, or supports that are metal, brick, rock, stone, or wood;
 - (7) If only one side of the fence is stained wood or other finished material, the finished side shall face away from the interior of the property; if support components are provided on only one side of the fence, such support components shall be on the side facing the interior of the property;
 - (8) If a fence crosses a driveway or means of vehicular access to the property, the fence and any gate shall be located so that entering vehicles will be completely off the street when stopped for the gate to open, and such gate shall open parallel to or away from the street;
 - (9) No chain link, barbed wire, or electrified fences shall be installed or maintained;
 - (10) No fence, including decorative or ornamental fence tops, shall be designed to include or be constructed of barbed wire, broken glass or any exposed sharp or pointed materials that may penetrate or impale persons or animals.
- (c) On a corner lot, a fence may be erected and maintained in a side yard and rear yard adjacent to a street, but may be located no closer than 15 feet from:
- (1) The edge of the street curb closest to the property, if the street has a curb; or
 - (2) The edge of the street pavement, if there is no curb.
- (d) If a fence along the side or rear of a lot or property is erected to the property line, adequate access to utility lines and meters shall be provided.
- (e) In no event may a fence be erected or maintained in or upon a city right-of-way or public right-of-way, except when installed by the city or its agents for municipal purposes.
- (f) All fences shall be maintained in good condition.

(g) See Section 107-32(d) for additional corner lot requirements and Section 107-81 for additional residential fence requirements.

(Code 1995, § 14.02.125; Ord. No. 2012-10-17(A), § 2, 10-17-2012; Ord. No. 2018-03-18, 3-21-2018)

Sec. 107-35. Swimming pools and sport courts.

- (a) A swimming pool or sport court may only be constructed on a lot within the residential or park zoning districts.
- (b) No swimming pool or sport court shall be constructed or maintained in the area between the front lot line and the front setback line of a lot.
- (c) On a corner lot, no swimming pool or sport court shall be constructed or maintained in the area between the side setback line and the side lot line that borders a street.
- (d) No swimming pool or sport court shall be constructed or maintained:
 - (1) In the area between the side setback line and a side lot line that does not border a street; nor
 - (2) In the area between the rear setback line and a rear lot line.
- (e) A deck or apron designed to serve a swimming pool or sport court shall be located at least five feet from a side lot line and ten feet from a rear lot line.
- (f) Overhead lighting in swimming pool or sport court areas is prohibited.
- (g) Residential swimming pool equipment shall comply with Section 107-84.
- (h) Each outdoor swimming pool erected, constructed or substantially altered after March 1, 1988, shall be completely enclosed by a fence in compliance with all applicable regulations then adopted by the city and in effect from time to time. From and after April 20, 2016, all such new or substantially altered fences shall comply with the requirements of appendix G, section AG 105.1 of the 2012 International Residential Code, except that no building material may be used in the construction of a fence except as permitted by this Code.
- (i) Following the issuance of a certificate of occupancy for a swimming pool or other improvements that include a swimming pool, the swimming pool fence required by subsection (g) of this section shall be maintained in reasonably good condition and in the manner and configuration required by the applicable regulations of the building code adopted by the city and in effect at the time of the original installation of such fencing. Such obligation to maintain shall continue at all times that the swimming pool is in usable condition or holds water. On an annual basis or such other frequency reasonably determined by the responsible city official, a designated agent of the city may require a visual inspection of a swimming pool and related fencing for which a certificate of occupancy has been issued. Any such inspection shall be conducted only after reasonable written or verbal advance notice has been provided to the owner or occupant of the affected property. If a swimming pool fence is found not to comply with applicable regulations, the designated official shall provide written notice of noncompliance by certified mail forwarded to the address where the swimming pool is located. The owner shall make all repairs and corrections to make the fencing fully compliant not later than 30 days after the date written notice of noncompliance is forwarded as provided in this subsection (h) of this section. The designated official shall conduct an inspection to verify timely compliance.
- (j) A failure to timely correct each noncompliance in a swimming pool fence following notice of noncompliance forwarded as provided in subsection (h) of this section shall constitute a Class C misdemeanor. An offense shall be punishable by a fine of not less than \$25.00 nor more than \$500.00 per day the noncompliance continues. The penalty provided in this subsection shall be cumulative and not exclusive of any other civil or injunctive remedy provided by applicable law.

Commented [BB1]: Update reference if 107-84 is moved.

(Code 1987, ch. 11, subch. G, art. IV, § 6; Code 1995, § 14.02.126; Ord. No. 2016-03-16(B), 3-16-2016; Ord. No. 2023-11-15-03, § 2, 11-15-2023)

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~~to have~~ moved,**Sec. 107-35. Swimming pools and sport courts.**

- (a) A swimming pool or sport court may only be constructed on a lot within the residential or park zoning districts.
- (b) No swimming pool or sport court shall be constructed or maintained in the area between the front lot line and the front setback line of a lot.
- (c) On a corner lot, no swimming pool or sport court shall be constructed or maintained in the area between the side setback line and the side lot line that borders a street.
- (d) No swimming pool or sport court shall be constructed or maintained:
 - (1) In the area between the side setback line and a side lot line that does not border a street; nor
 - (2) In the area between the rear setback line and a rear lot line.
- (e) A deck or apron designed to serve a swimming pool or sport court shall be located at least five feet from a side lot line and ten feet from a rear lot line.
- (f) Overhead lighting in swimming pool or sport court areas is prohibited.
- (g) Residential swimming pool equipment shall comply with Section 107-84 addressing allowable locations for residential mechanical equipment including pool equipment.
- (hg) Each outdoor swimming pool erected, constructed or substantially altered after March 1, 1988, shall be completely enclosed by a fence in compliance with all applicable regulations then adopted by the city and in effect from time to time. From and after April 20, 2016, all such new or substantially altered fences shall comply with the requirements of appendix G, section AG 105.1 of the 2012 International Residential Code, except that no building material may be used in the construction of a fence except as permitted by this Code.
- (ih) Following the issuance of a certificate of occupancy for a swimming pool or other improvements that include a swimming pool, the swimming pool fence required by subsection (g) of this section shall be maintained in reasonably good condition and in the manner and configuration required by the applicable regulations of the building code adopted by the city and in effect at the time of the original installation of such fencing. Such obligation to maintain shall continue at all times that the swimming pool is in usable condition or holds water. On an annual basis or such other frequency reasonably determined by the responsible city official, a designated agent of the city may require a visual inspection of a swimming pool and related fencing for which a certificate of occupancy has been issued. Any such inspection shall be conducted only after reasonable written or verbal advance notice has been provided to the owner or occupant of the affected property. If a swimming pool fence is found not to comply with applicable regulations, the designated official shall provide written notice of noncompliance by certified mail forwarded to the address where the swimming pool is located. The owner shall make all repairs and corrections to make the fencing fully compliant not later than 30 days after the date written notice of noncompliance is forwarded as provided in this subsection (h) of this section. The designated official shall conduct an inspection to verify timely compliance.
- (i-i) A failure to timely correct each noncompliance in a swimming pool fence following notice of noncompliance forwarded as provided in subsection (h) of this section shall constitute a Class C misdemeanor. An offense shall be punishable by a fine of not less than \$25.00 nor more than \$500.00 per day the noncompliance continues. The penalty provided in this subsection shall be cumulative and not exclusive of any other civil or injunctive remedy provided by applicable law.

(Code 1987, ch. 11, subch. G, art. IV, § 6; Code 1995, § 14.02.126; Ord. No. 2016-03-16(B), 3-16-2016; Ord. No. 2023-11-15-03, § 2, 11-15-2023)

Sec. 107-71. Building height.

- (a) No portion of any building or structure (except a chimney, attic vent, lightning rod, or any equipment required by the city building code) may exceed 35 feet in height. Except as may be required by applicable codes, no chimney, attic vent, lightning rod or required equipment may extend more than three feet above the highest point of the following: the coping of a flat roof, the deck line of a mansard roof, or the gable of a pitched or hipped roof.
- (b) No part of a building or structure, exclusive of the exceptions outlined in this chapter may break this plane. The maximum allowable building height is 25 feet at a horizontal distance of ten feet from the property line, as measured from the original native ground surface or finished grade, whichever is lower. For each additional foot of horizontal distance beyond ten feet from the property line, the building height may increase by one foot, up to a maximum of 35 feet. The maximum height of 35 feet is allowed at a horizontal distance of at least 20 feet from the nearest property line.
- (c) Should a landowner believe the slope of a lot be so severe that the requirements proposed above have extreme adverse impact on the lot, an owner may seek relief from these requirements by variance granted by the board of adjustment.
- (d) Original native ground surface may be adjusted graphically as a straight line across unusual or minor topographic variations, including pools, ponds, existing basements, rock outcroppings, depressions, and natural drainage ways, with the intent to approximate the original grade of the property without penalty for previous construction.
- (e) Building height may be increased below the parallel plane by way of excavation, when starting a minimum of 20 feet horizontal from the side or rear property lines, as follows:
 - (1) As to the portion of the building above the excavated area: Forty feet above finished floor for uppermost surface of eave/parapet;
 - (2) As to the portion of the building above the excavated area: Forty-five feet above finished floor for ridgeline of sloped roof with a minimum of three over twelve roof pitch.
 - (3) Any exposed foundation resulting from this increase may not exceed 18 inches.
- (f) The parallel plane may not be breached.
- (g) Foundation exposure within public view from the right-of-way cannot exceed six feet in height. Foundation exposure within public view from the right-of-way must be screened such that the unscreened portion does not exceed two and a half feet in height.
- (i) Should some portion of the buildable area reside on or have a common boundary with a flood plain or drainage easement, and it can be shown that such conditions would have extreme adverse impact on the lot's buildable area, an owner may seek relief from the requirements of section 107-71(b) by special exception granted by the board of adjustment. In such cases, the board may grant a special exception such that the maximum height limits as stated in section 107-71(b) are increased for up to five additional feet of building height.

(Code 1987, ch. 11, subch. G, art. V, § 5; Code 1995, § 14.02.205; Ord. No. 2025-05-21-07, § 2, 5-21-2025)

Sec. 107-83. Special exception.

Should some portion of the buildable area reside on or have a common boundary with a flood plain or drainage easement, and it can be shown that such conditions would have extreme adverse impact on the lot's buildable area, an owner may seek relief from the requirements of section 107-71(b) by special exception granted by the board of adjustment. In such cases, the board may grant a special exception such that the maximum height limits as stated in section 107-71(b) are increased for up to five additional feet of building height.

(Ord. No. 2025-05-21-07, § 2, 5-21-2025)

Commented [BB1]: This section moved to Section 107-71(g).

Sec. 107-84. Mechanical equipment in required yards.

- (a) Mechanical equipment is prohibited in the required front yard or between the house and front yard.
- (b) Mechanical equipment is permitted in the required side yard and in the required rear yard, subject to the following conditions:
 - (1) A minimum setback of ten feet from the property line is required.
 - (2) The equipment shall be screened from Rollingwood public view using either vegetative or structured screening.

(Ord. No. 2025-09-17-23, § 2, 9-17-2025)

Commented [BB1]: If 107-83 is not reserved, then renumber this section to 107-83 and modify reference in 107-35(g) to "107-83.

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Sec. 107-118. Special uses.

(a) Subject to approval by the city council, the following special uses may be permitted in the C district:

- (1) Facilities for assembling of and testing electronics components;
- (2) Child day care facilities, provided this is the only use on the particular lot;
- (3) Banks or savings and loan associations, including automated teller machines (ATMs);
- (4) Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;
- (5) For lots with frontage on Bee Cave Road, a personal wireless telephone service facility;
- (6) Research laboratories;
- (7) Cafes, cafeterias, or restaurants without outdoor dining;
- (8) Cafes, cafeterias, or restaurants with outdoor dining;
- (9) Convenience stores;
- (10) Grocery or food specialty stores;
- (11) Package liquor stores;
- (12) Automotive service stations;
- (13) ~~Parking garages, provided that the garage is an accessory to the primary use on the same lot or an adjacent commercial lot;~~
- (13-4) Clinics without overnight facilities;
- (14-5) Hardware stores; and
- (15-6) Facilities for assembling computer software products.

Commented [BB1]: Redundant of (4) above.

(Ord. No. 2024-06-12-07, § 2(Exh. A), 6-12-2024)

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.~~
(Ord. No. 2025-04-16-13, § 2, 4-16-2025)

Commented [BB1]: This clause no longer needed due to adoption of landscape and tree canopy protection for all non-residential zones.

Sec. 107-371. Definitions.

In this subdivision:

(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 a tree that has a trunk with a diameter of 12 inches or more, measured four and one-half 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:

- a. Anacacho Orchid Tree
- b. Common Tree Senna
- c. Crape Myrtle (dwarf)
- d. Desert Willow
- e. Evergreen Sumac
- f. Eve's Necklace
- g. Flameleaf Sumac
- h. Goldenball Leadtree
- i. Mexican Buckeye
- j. Mexican Plum
- k. Possumhaw Holly
- l. Rough Leaf Dogwood
- m. Texas Mountain Laurel
- n. Texas Persimmon
- o. Texas Pistache
- p. Texas Redbud
- q. Wax Myrtle

- r. Yaupon Holly
- s. Cherry Laurel

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

(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 DBH diameter equal to not less than one-fourth the DBH diameter of the protected tree it replaces up to a maximum DBH diameter of 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) Diameter at breast height or "DBH" means the diameter of a tree at a height of 4 ½ feet above natural grade.

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(f) *Heritage tree* means a protected tree of a protected species, having a DBH diameter of 24 inches or more, ~~measured 4½ feet above natural grade~~. To determine the DBH diameter of a multi-trunk tree, measure all the trunks; add the total DBH diameter of the largest trunk to ½ the DBH diameter of each additional trunk. A multi-trunk tree having a total DBH diameter of 24 inches is a heritage tree.

(g) *Critical root zone* ("CRZ") means the area around and under a tree having a radius of one foot per inch of DBH diameter from the trunk of the tree outwards and 24 inches in depth. For example, for a tree having a ten-inch DBH diameter, the critical root zone is ten feet out from the trunk and 24 inches deep.

(h) *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) Construction or disturbance that occurs within an area that constitutes more than 50 percent of the total *Critical root zone* ("CRZ") and ½ the radial distance of the CRZ for each tree being preserved, including protected trees and heritage trees. However, flatwork, decking, or similar construction above ground and not disturbing roots is permitted within the CRZ, and such work shall be approved and shall not be classified as removal.
- (5) If the proposed or actual protection of the CRZ before construction, during construction, and following construction does not meet the requirements of sec 101-256, then the tree shall be considered removed and require mitigation in accordance with the terms of this subdivision.
- (6) Excessive pruning, including, but not limited to, pruning that exceeds 25 percent of the canopy of the tree.

(i) *City arborist* means an ISA certified arborist as designated by the city.

(ii) *Mitigation* means such remedies as are approved by the city development officer in consultation with the city arborist.

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(k-i) *Building official* for the purposes of this subdivision means the city development officer.

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(Ord. No. 2025-04-16-13, § 2, 4-16-2025)

Sec. 107-377. Replacement procedure.

Commented [BB1]: What procedures do we have in place for enforcement of this section?

- (a) Whenever replacement trees are required by the terms of this subdivision, the owner shall submit to the building official a replacement site plan showing the locations, species and sizes of all replacement trees and vegetation for final approval by the building official. 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 building official within seven days of the discovery of unforeseen subsurface conditions for approval by the building official. 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 building official in the tree removal permit, however, in no event will the time period be longer than one year, however this time period is abated while a property is under construction where replacement trees are required.
- (c) The owner shall notify the building official 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 years. The building official shall track all replacement trees, so that at three years post planting, their survival and health can be assessed, consulting with an arborist if necessary. The building official may contact the owner during this three-year period to arrange for a site visit in order to confirm the replacement trees have survived. Replacement trees that do not survive for three 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.

(Ord. No. 2025-04-16-13, § 2, 4-16-2025)

Sec. 107-386. Non-residential tree canopy management.

(a) *Definitions.* For purposes of this section,

- (1) A "protected tree" means a tree of a "protected species" tree as defined in part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) having a trunk with a diameter not less than 12 inches nor more than 24 inches, measured 4½ feet above natural grade, as measured by an arborist.
- (2) "Heritage tree" means a tree of a "protected species" as defined in part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) having a diameter of 24 inches or more, measured 4½ feet above natural grade, or a tree cluster, as measured by an arborist.
- (3) "Diameter at breast height" or (DBH) means the diameter of a tree at a height of 4½ feet above natural grade.
- (4) "Critical root zone" means "the area around and under a tree having a radius of one foot per inch of DBH from the trunk of the tree outwards and 24 inches in depth. For example, for a tree having a ten-inch DBH, the critical root zone is ten feet out from the trunk and 24 inches deep.
- (5) "Tree cluster" means a cluster of two or more trees of a "protected species" located less than ten feet apart having a combined total diameter of 24 inches or more.

(b) The requirements of Part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) addressing protection of protected trees, shall apply to any property within any zoning district other than the residential zoning district. To the extent of any conflict between part II, Land Development Code, chapter 107, division 10, subdivision 3 (sections 107-369 through 107-385) and this section, this section shall control.

(c) In addition to the requirements of subsection (b), the following requirements for the preservation and protection of protected and heritage trees shall apply to any property, including any property within the city's rights-of-way, within any zoning district other than the residential zoning district.

- (1) *Permit required.* A grading plan, tree survey, and tree protection plan shall be submitted prior to any tree removal, clearing or grading, filling, or other form of site development. No tree may be removed, nor shall any clearing or grading permit, site development plan, building permit, or tree removal permit be issued until a tree survey is submitted and tree protection plan is submitted and approved.
- (2) *Tree survey requirements.* The tree survey shall address all requirements specified in section 107-376, development application requirements, indicate all existing, live, healthy trees with an eight-inch or larger diameter and all protected and heritage trees, and shall indicate the diameter, location, and species of each tree. Trees observed to be distressed will be indicated with an asterisk on the tree list. Trees shall be represented by circles indicating the diameter of the tree. Unbroken circles indicate trees that are to remain. Dashed circles indicate trees that are to be removed, including trees identified to be distressed. Protected trees proposed to be removed to accommodate the development shall be indicated, along with the proposed replacement trees.
- (3) *Credit for preservation of existing trees.* Preservation of existing protected species trees and heritage trees that are located outside the required 75-foot greenbelt may be credited toward required plantings (for example, landscape requirements, street trees, trees in parking areas) but not for required mitigation according to the following table:

Type of tree	DBH	Credit factor *
Protected species	4-7.9 inches	1.15:1
Protected species	8-12 inches	1.5:1

Protected species	greater than 12 inches	2.0:1
Tree cluster		1.5:1 for each inch within the cluster

*Credit factor provides tree credits per tree preserved.

Where the application of a credit factor produces a fractional number, rounding up to the next whole number of "credited" trees is permitted.

Example: Preservation of one ten-inch diameter protected species tree produces a credit equal to 1.5 trees of required planting.

(4) *Mitigation.* Any protected or heritage trees that are removed as a result of approval of a tree removal permit must be mitigated by planting of a tree of the same species on the same property in the following ratios:

- a. For each protected tree removed, one new tree of a protected species having a similar mature canopy spread as the removed tree, with a DBH of at least four inches and 14 feet in height,
- b. For each heritage tree removed, three new trees of a protected species having a similar mature canopy spread as the removed tree, with a DBH of at least four inches and 14 feet in height.

An exception to the mitigation requirements may be granted by the building official, with the approval of the city arborist, if the applicant demonstrates: (1) the existing tree canopy would prohibit the growth of the replacement tree(s); or (2) the required replacement trees to be installed would be planted under the canopy of an existing tree. A permit authorizing the removal of a protected or heritage tree shall require mitigation as specified above.

(5) *Prohibition on removal of heritage trees.* Removal of a heritage tree is prohibited unless a heritage tree removal special exception is granted under subsection (6) or a certified arborist confirms that the heritage tree is either: (i) dead; (ii) is an imminent hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree, in whole or in part; or (iii) is diseased and restoration to sound condition is not practicable or the disease may be transmitted to other trees and endanger their health. The city administrator shall have the authority to determine whether such documentation is in order and may consider specific safety situations in light of potential hazards to life or property. In the case of an imminent hazard to life or property under subsection (ii), documentation may be submitted within 72 hours after the action is taken.

(6) *Heritage tree removal special exception.* Except as provided in subsection (5), removal of a heritage tree is prohibited unless a heritage tree removal special exception is granted by the board of adjustment upon a finding that: (i) all reasonable efforts have been made to avoid removing the tree, (ii) the location of the tree precludes all reasonable access to the property or all reasonable use of the property, and (iii) removal of the tree is not based on a condition caused by the method or design chosen by the applicant to develop the property.

(7) *Limitation on removal of a protected tree.* A protected tree may be removed upon the determination of the city arborist and approval of the building official if: (i) the tree is damaged by natural causes or is diseased beyond the point of recovery, (ii) the tree is in danger of falling, or (iii) the tree is dead. Any application to remove a protected tree shall be supported by certification by a certified arborist that one or more of these conditions exists and such conditions shall be reviewed by the city arborist. In addition, removal may be approved upon the grant of a special exception by the board of adjustment upon a finding that (i) all reasonable efforts have been made to avoid removing the tree, (ii) the location of the tree precludes all reasonable access to the property or all reasonable use of the property, and (iii) removal of the tree is not based on a condition caused by the method or design chosen by the applicant to develop the property.

- (d) *Pre- and post-construction tree protection plan.* A pre- and post-construction tree protection plan shall be submitted with the tree permit and shall include the following:
- (1) Irrigation and fertilization are required for any protected or heritage tree that will be or have been disturbed by construction activities, including disturbance of the critical root zone. Fertilizers must be phosphate-free. The tree protection plan shall describe the plan for irrigation and fertilization during the construction period until final installation of all landscaping.
 - (2) The tree protection plan shall describe all measures to be taken during construction to protect any protected and heritage trees from damage during construction, including rigid fencing, shielding, and signage, as necessary. Tree protection shall include rigid fencing placed with a radius of at least ten feet from the trunk or at the critical root zone, whichever is greater, unless property lines or other features prohibit a complete radius. Rigid fencing shall consist of chain link or wood fencing not less than four feet high at the drip line of the tree. Stakes shall be no more than six feet apart and at least 1½ deep into the ground. Rigid fencing shall be at least three feet in height. Tree protection shall remain in place until final landscaping installation is approved by the city administrator or designee.
 - (3) *Protection of critical root zone.* Construction within or impervious paving over the critical root zone of any protected or heritage tree is prohibited. A minimum of 50 percent of the critical root zone of any protected tree or heritage tree must be preserved at natural grade and with natural ground cover. No cut or fill nor any deposit or stockpiling of earthen materials in their natural state greater than four inches will be located closer to the tree trunk than one-half the CRZ radial distance. No grade changes, excavation or trenching shall be permitted within the limits of the critical root zone unless adequate construction methods are approved by the city arborist.
 - (4) Parking or storing of vehicles, equipment or materials allowed within the critical root zone or any protected or heritage tree is prohibited. The plan shall designate where all construction equipment and materials will be stored outside the critical root zone.
 - (5) Activities requiring approval of the city arborist shall be identified in the tree protection plan and shall be submitted for review and comment to the city arborist, along with such fees as are required by the city to cover all costs of the review process.
- (e) *Violations/penalties.*
- (1) It shall be an offense for a person:
 - a. To fail to perform an act required by the provisions of this section;
 - b. To fail to timely comply with any term of a permit issued pursuant to this section, including terms regarding the preservation of heritage trees and the planting and maintenance of required replacement trees;
 - c. To hire, engage, or permit any person engaged in the business of tree planting, maintenance, or removal to perform such services on property in the city without a permit issued by the city pursuant to this Code;
 - d. Except as expressly allowed pursuant to this subdivision, to remove or to cause the removal of a heritage or protected tree without first obtaining a permit therefor;
 - e. To transfer property subject to obligations arising from a permit issued pursuant to this section if all obligations with respect to such permit are not then fulfilled unless the transferee of the property agrees in writing submitted to the city secretary to assume such permit and all obligations with respect to the protection of heritage trees and the planting and maintenance of required replacement trees; or
 - f. To fail to submit an application for a permit as required by this section.

- (2) An offense shall constitute a Class C misdemeanor punishable by a fine not to exceed \$1,000.00. An offense committed intentionally, knowingly, recklessly, or with criminal negligence shall be punishable by a fine not to exceed \$2000.00 per offense. Each tree damaged or removed in violation of this division shall constitute a separate offense. A failure to plant and maintain a required replacement tree shall constitute a separate offense. Each day a violation continues shall constitute a separate offense. The owner or tenant of any building, structure, or premises and any designer, builder, contractor, agent or other person who knowingly commits, participates in, assists in or maintains such violation may each be found guilty of a separate offense and subject to the penalties as provided herein.
 - (3) The city arborist, city council, or other duly authorized city official may issue a stop work order in connection with site clearing, site preparation, any permitted development of the property from which a heritage tree is removed without authorization or upon the occurrence of any other violation of this subdivision or of any term of a permit issued pursuant to this subdivision. Any person, including a workman on the site, who fails to comply with a stop work order shall be guilty of a misdemeanor punishable as provided for in the penalty section hereof. It shall be unlawful for any person to do any work on the site covered by the stop work order unless and until a new permit, application, or site plan has been filed and processed in accordance with the provisions of this chapter and the city council has granted approval to a new permit, application, or site plan which corrects the violations covered in the stop work order and all fees and fines have been paid.
 - (4) 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 subdivision. 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 subdivision for removal of a protected tree.
 - (5) Any temporary occupancy permit issued pending any completion of any required planting due to seasonal suitability of planting shall state the day by which planting shall be completed or an extension requested, and shall be revoked if the required planting is not completed or an extension granted by the stated date.
 - (6) *Injunction and other remedies.* Any tree removal or other work done contrary to any of the provisions of this section or to any of the details contained in any final site plan approved by the city or to any of the conditions imposed in connection with the granting of any application required by this section is hereby declared to be unlawful and shall constitute a violation of this section. The city council may direct the city attorney to initiate injunction, mandamus, abatement, or any other action available in law or equity to prevent, enjoin, abate, or correct unlawful tree removal or other work.
- (f) *To the extent of conflict with another section of the Code, this section controls.*

(Ord. No. 2024-06-12-07, § 2(Exh. A), 6-12-2024)

Sec. 107-422. Nonconforming buildings, structures.

Any nonconforming building or structure may, so long as it remains otherwise lawful, be continued subject to the following requirements and limitations:

- (1) Except as otherwise required by ordinance or law, a nonconforming building or structure may not be altered in a manner that increases the extent of its nonconformity.
- (2) Except as otherwise required by ordinance or law, a nonconforming building or structure must be brought into conformity if:
 - a. Fifty percent of the square footage of the building or structure is demolished, excluding a permit for interior construction or remodeling only; or
 - b. If the nonconforming building or structure is moved, it shall conform to the regulations for the district within or into which it is moved.
- (3) The provisions of subsection (2)a of this section do not apply to the demolition of the roof of a building or structure.
- (4) If the nonconforming building or structure, other than a dwelling, is damaged or destroyed by fire or other accident or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure, provided that the repair or reconstruction conforms with ~~the construction materials standards set forth in section 107-107~~ the compatibility standards set forth in section 107-116, and will not increase the extent of the nonconformity of the building or structure.
- (5) If the nonconforming building or structure that is a dwelling is damaged or destroyed by fire or other accidental or natural means, the building official shall, upon application by the owner thereof, issue a permit for repair or reconstruction of the building or structure if the repair or reconstruction will not increase the extent of the nonconformity of the building or structure.
- (6) Nothing in this article shall be deemed to:
 - a. Prevent ordinary repairs to nonconforming buildings or structures;
 - b. Prevent alterations of or extensions to nonconforming building or structures as required by law or ordinance; or
 - c. Prevent the restoration to a safe condition of any nonconforming building or structure, or portion thereof, declared to be unsafe by the building official or other duly authorized official.

Commented [BB1]: Strike reference to Section 107-107 that addressed building materials (masonry, glass, etc.) as it has been removed from the code pursuant to state law limitations on a city's authority to specify required building materials on commercial properties.

(Code 1995, § 14.02.924; Ord. No. 2017-09-13, 9-13-2017)