

**BOROUGH OF CAPE MAY POINT
COUNTY OF CAPE MAY
STATE OF NEW JERSEY**

ORDINANCE NO. 14-2026

**AMENDING CHAPTER 138 “TREE REMOVAL AND REPLACEMENT” OF
THE CODE OF THE BOROUGH OF CAPE MAY POINT**

BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point, County of Cape May, State of New Jersey, that Chapter 138 “Tree Removal and Replacement” of the Code of the Borough of Cape May Point be replaced with the following:

SECTION I. Purpose:

To establish requirements for tree removal and replacement in the Borough of Cape May Point (the “Borough”) to reduce soil erosion and pollutant runoff, promote infiltration of rainwater into the soil, protect the environment, public health, safety, and welfare and to comply with State stormwater permit requirements.

Due to the unique importance of the Borough on the Atlantic Flyway, protection and replacement of the tree canopy with native trees is highly desired to support resident and migrant bird populations. This ordinance is consistent with the Borough’s Master Plan goal to “preserve and conserve natural resources, including native vegetation, especially for the migrating birds and butterflies that use the Borough resources as a stopover point.”

This ordinance shall apply to all private property within the Borough and public property trees along roadways. The removal and replacement of trees in public parks and forests is addressed in the Borough’s Community Forestry Management Plan accredited by the New Jersey Urban and Community Forestry Program and administered by the Borough’s Tree Committee.

SECTION II. Definitions:

For the purpose of this ordinance, the following terms, phrases, words, and their derivations shall have the meanings stated herein unless their use in the text of this ordinance clearly demonstrates a different meaning. When consistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The use of the word "shall" means the requirement is always mandatory and not merely directory.

- A. “Applicant” means any “person,” as defined below, who applies for approval to remove trees regulated under this ordinance.

B. "Dead or Dying Tree" - A tree that is no longer living or is in a state of irreversible decline due to disease, structural failure, environmental stress, infestation, or damage, as determined by a Borough Official. This includes storm damaged, fallen, or broken trees.

C. "Diameter at Breast Height (DBH)" means the diameter of the trunk of a mature tree generally measured at a point four and a half feet above ground level from the uphill side of the tree. For species of trees where the main trunk divides below the 4-½ foot height, the DBH shall be measured at the highest point before any division.

D. "Nuisance Tree" means a tree or limbs thereof that meet one or more of the criteria below. Trees that do not meet any of the criteria below and are proposed to be removed solely for development purposes are not nuisance trees. All Nuisance Tree determinations must be made as specified below:

1. Obstructs the view of traffic signs or the free passage of pedestrians or vehicles, where pruning attempts have not been effective as determined by the Public Works Department;
2. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.) as determined by a Borough official;
3. Is determined to be a threat to public health, safety, and/or welfare as determined by a Borough official and/or other designated agent of the Borough; or
4. Is an invasive or prohibited species listed on the Environmental Commission's current list of Prohibited Non-native Trees and Woody Plants as determined by a Borough official.

E. "Municipal Right-of-Way" means the surface of, and the space above or below, any public street, road, lane, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Borough as an easement or in fee simple ownership. This term also includes rights-of-way held by the County of Cape May where the Borough's approval is required for the use of same pursuant to N.J.S.A. 27:16-6. The width of the right-of-way is not standard and must be determined by a municipal official of the Borough or by a property survey.

F. "Native Tree" means a tree listed on the Environmental Commission's list of Native Trees and Woody Plants and/or those so listed in Approved List of Replacement Tree Species for Cape May Point.

G. "Person" means any individual, resident, corporation, utility, company, partnership, firm, or association.

H. "Public Tree" means any tree planted on Borough land or in any Borough right-of-way.

I. "Resident" means an individual who resides on the residential property or contractor hired by the individual who resides on the residential property where a tree(s) regulated by this ordinance is removed or proposed to be removed.

J. "Tree" means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

K. "Tree Caliper" means the diameter of the trunk of a young tree, measured six (6) inches from the soil line. For young trees whose caliper exceeds four (4) inches, the measurement is taken twelve (12) inches above the soil line.

L. "Tree Committee" means the administrative body for the Borough's Community Forestry Management Plan. It consists of the Commissioner of Public Works, Parks & Public Property, the Public Works Supervisor, one or two Environmental Commission members, and other employees or volunteers who have completed state-required training.

M. "Tree removal" means to cut down, kill, or cause irreparable damage that leads to the decline and/or death of a tree. This includes, but is not limited to, excessive pruning, application of substances that are toxic to the tree, over-mulching or improper mulching, and improper grading and/or soil compaction within the critical root radius around the base of the tree that leads to the decline and/or death of a tree. Removal does not include responsible pruning and maintenance of a tree, or the application of treatments intended to manage invasive species.

SECTION III. Regulated Activities:

All tree removal on private property and in the Municipal Right-of-Way shall require a permit issued by the Borough Clerk. No person shall remove trees without having obtained and possessing a valid permit issued by the Borough Clerk.

A. Application Process for Trees on Private Property:

1. Any person planning to remove a tree, as defined as Tree removal, on private property with a DBH of 6" or more shall submit a Tree Removal on Private Property Application to the Borough Clerk. No tree shall be removed until a permit is issued and any, and all, associated fees have been received by the Borough.
2. The Tree Removal on Private Property Application shall be accompanied by a site plan or drawing describing the location of the tree(s) to be removed, the species if known by the applicant/property owner, and proposed replacement tree species

as per Section III-B below. Any requested exemptions from replacement tree planting and associated fees must be detailed in the application as per Section IV Exemptions.

3. The application fee shall be seventy-five (\$75) dollars. Funds received shall be distributed towards administrative and site inspection activities.

B. Tree Replacement Requirements on Private Property:

1. Any person, who removes one or more tree(s), as defined as Tree removal, with a DBH of 6" or more on private property, unless otherwise exempt under Section V, shall be subject to the requirements of the Tree Replacement Requirements Table.
2. The species type and diversity of replacement trees shall be in accordance with the current "Approved List of Replacement Tree Species for Cape May Point", which may be updated from time to time by resolution.
3. Replacement tree(s) shall:
 - a. Meet the Tree Replacement Criteria in the tables below;
 - b. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the Borough;
 - c. Be monitored by the applicant for a period of two (2) years to ensure their survival and shall be replaced as needed within twelve (12) months; and,
 - d. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

Tree Replacement Requirements Table: Non-Nuisance Trees

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Replacement Fee in Lieu of Planting
1	6" to <12.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$250 <u>per</u> tree not planted
2	13" to <22.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not <u>planted</u>
3	23" to <32.99"	Replant 6 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted
4	≥33"	Replant 8 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted

Tree Replacement Requirements Table: Nuisance Trees

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Replacement Fee in Lieu of Planting
1	6" to <12.99"	Replant 1 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted
2	13" to <22.99"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted
3	23" to 32.99"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted
4	≥33"	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$250 per tree not planted

C. Replacement alternative:

If a property will have a minimum of three healthy trees remaining on the property after removal, the applicant may choose to pay the Replacement Fee in Lieu of Planting for some or all of the replacement trees required in the tables above. All fees in lieu of planting shall be deposited into the Borough's Community Tree Trust account which supports the planting, care, and maintenance of trees throughout the dunes, parks, and open public space across the borough. The fund also supports other expenses associated with the Community Forestry Management Plan accredited by the New Jersey Urban and Community Forestry Program.

D. Application Process for Trees on the Municipal Right-of-Way:

1. Any person requesting removal of a tree, as defined as Tree removal, in the Municipal Right-of-Way shall submit a Tree Removal Application Municipal Right-of-Way to the Borough Clerk. The application shall include a site plan or drawing describing the location of the tree(s) to be removed and/or planted.
2. Upon inspection by municipal officials, Nuisance Trees in the municipal right-of-way may be removed by the adjoining property owner upon receiving written permission from the Borough, with no fee or replacement requirement. Healthy trees of species listed in the current "Approved List of Replacement Tree Species for Cape May Point" must remain unless it is determined that utilities or roadways are or will be damaged or impeded.
3. No person shall plant trees in the Municipal Right-of-Way without approval by the Borough, or a designated agent thereof, to ensure that utilities and infrastructure will not be damaged or impeded. Proposed trees shall be from the current "Approved List of Replacement Tree Species for Cape May Point".

SECTION IV. Borough Requirement for Removal of Nuisance Trees

A. Upon a determination by the Code Enforcement Official and/or other designated agent of the Borough that is responsible for carrying out the provisions of this Section that a Nuisance Tree exists on private property that may cause damage to property owned by the Borough, and/or otherwise is likely to endanger residents or visitors of the Borough if permitted to remain, the above-referenced agent of the Borough shall serve written notice upon the property owner requiring removal of the Nuisance Tree. Such notice shall contain the following information:

1. Identification of the property and the location of the Nuisance Tree upon the property;
2. The condition of the tree that constitutes it being defined as a Nuisance Tree that requires removal;
3. The time period for which the property owner shall be permitted to remove the Nuisance Tree based on the Nuisance Tree presenting an imminent danger to the public;
4. A statement to the property owner advising that if the Nuisance Tree is not removed within the time period set forth in the notice required by subsection C, above, the Borough may cause the removal of the Nuisance Tree without further notification required to be provided to the property owner;
5. A statement that the reasonable costs of removal of the Nuisance Tree, including administrative, legal, expert, equipment, disposal, and restoration costs, may be charged to the property owner and become a lien against the real property from which the Nuisance Tree was required to be removed; and
6. A statement advising the property owner of their right to request a hearing or reconsideration of the declaration of Nuisance Tree that requires removal, pursuant to subsection G, below.

B. In the event that a property owner fails to remove the Nuisance Tree within the time period stated in the notice issued by the Borough, or within the time period of any extension granted by the Borough, the Borough may enter upon the property and remove or cause the removal of the Nuisance Tree by Borough personnel or by a contractor retained by the Borough for such purpose.

C. Borough entry onto the property shall be limited to what is reasonably necessary to remove the Nuisance Tree and to restore the area to a safe condition. The Borough shall make a reasonable effort to avoid unnecessary damage to any surrounding vegetation, structures, landscaping, utilities, and improvements.

D. In an emergency where it is determined by the Borough that a Nuisance Tree presents an imminent threat to life, property, or public infrastructure, the Borough may

remove or cause the Nuisance Tree to be removed immediately upon such notice as may be practicable under the circumstances.

E. The Borough shall keep or cause to be kept an accurate account of all costs incurred by the Borough in removing a Nuisance Tree pursuant to this Section, including:

1. Inspection, arborist, engineering, and/or expert fees;
2. Labor, equipment, traffic-control, and disposal costs;
3. Contract costs;
4. Administrative costs;
5. Legal fees and costs of notice; and
6. Reasonable costs of site restoration.

F. The Borough's agent authorized for enforcement of this Section shall certify the costs to the governing body. Upon review and approval by the governing body, the costs shall be charged against the property and the property owner. The property owner shall be required to pay the certified costs to the Borough within thirty (30) days after mailing of a statement of charges. If the charges are not paid within the thirty (30) day period, the full amount thereof, together with interest at the same rate as delinquent municipal taxes and any additional costs of collection, shall become a municipal lien upon the lands and premises upon which the Nuisance Tree was located. The municipal lien shall be collected and enforced by the same officers and in the same manner as delinquent municipal taxes, pursuant to N.J.S.A. 40:48-2.14. The Borough may also pursue any other remedy available at law or in equity.

G. A property owner may request reconsideration of a determination that a tree is a Nuisance Tree, or of the amount of costs certified under subsection F, above, by submitting a written request to the Borough Clerk within ten (10) calendar days of service of the notice or statement of charges. Any request for reconsideration shall be heard by the governing body within thirty (30) days of receipt and the property owner shall be required to appear, either personally or through counsel, and to present evidence and testimony in support of its request for reconsideration of the Borough's determination. The filing of a request for reconsideration shall not stay the removal of a Nuisance Tree if such tree presents an imminent danger to public health, safety, or welfare.

SECTION V. Exemptions:

All persons shall comply with the tree replacement standard outlined above, except in one or more of the cases detailed below. All persons claiming an exemption shall submit an application with written justification as follows:

A. Any trees removed pursuant to a New Jersey Department of Environmental Protection (NJDEP) or U.S. Environmental Protection Agency (EPA) approved environmental clean-up, or NJDEP approved habitat enhancement plan, or a NJDEP approved Community Forestry Management Plan.

B. Dead or Dying trees as determined by a Borough Official may be removed with no replacement requirement provided the property will have a minimum of three healthy trees on the property after removal.

SECTION VI. Enforcement:

This ordinance shall be enforced by the Code Enforcement Officer or other officials of the Borough during the course of ordinary enforcement duties. Borough officials or their designees will conduct site inspections as needed to ensure compliance with tree replacement requirements.

SECTION VII. Violations and Penalties:

A. Any person(s) found in violation of the provisions of this ordinance shall be subject to the following fines:

1. One Thousand (\$1000.00) Dollars per tree removal, as defined in section II.M., without permit plus the size associated replacement fee in lieu of planting from the Tree Replacement Requirements Table; or,
2. Five Hundred (\$500.00) Dollars per tree not planted by the specified date, or no longer living two years after the specified date, plus the size associated replacement fee in lieu of planting from the Tree Replacement Requirements Table.

B. The payment of fines does not release the property owner from complying with all provisions of this ordinance including additional application fees, planting, and maintaining replacement trees, and fees in lieu of planting in order to come into compliance.

C. All fines shall be deposited into the Borough's Community Tree Trust Account.

SECTION VIII. Severability:

Each section, subsection, sentence, clause, and phrase of this Ordinance is declared to be an independent section, subsection, sentence, clause, and phrase, and finding or holding of any such portion of this Ordinance to be unconstitutional, void, or ineffective for any cause or reason shall not affect any other portion of this Ordinance.

SECTION IX. Effective Date:

This Ordinance shall be in full force and effect from and after its adoption and any publication as may be required by law.

Final Adoption	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Geiger						
vanHeeswyk						
Yunghans						

ATTEST:

Elaine L. Wallace, Borough Clerk

Elise Geiger, Commissioner

Anita vanHeeswyk, Mayor

Suzanne Yunghans, Commissioner

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