

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

ORDINANCE NO. 15-2024

TREE REMOVAL AND REPLACEMENT ORDINANCE

BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point, County of Cape May, State of New Jersey, that Ordinance 12-2024, adopted May 9, 2024 be replaced in its entirety 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:

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. "Critical Root Radius (CRR)" – means the zone around the base of a tree where the majority of the root system is found. This zone is calculated by multiplying the diameter at breast height (DBH) of the tree by 1.5 feet. For example: a tree with a 6" DBH would have a CRR = 6"x1.5' = 9'.

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. "Hazard 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 hazard trees. All Hazard Tree determinations must be made as specified below:

1. Has an infectious disease or insect infestation that requires removal as determined by a Borough official;
2. Is dead or dying as determined by a Borough official;
3. 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;
4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.) as determined by a Borough official;
5. Is determined to be a threat to public health, safety, and/or welfare by a Borough official. This includes storm-damaged fallen or broken trees; or
6. Is an invasive or prohibited species listed on the Environmental Commission's 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.

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 Appendix A.

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

H. "Planting strip" means the part of a street right-of-way between the public right-of-way and the portion of the street reserved for vehicular traffic or between the abutting property line and the curb or traveled portion of the street, exclusive of any sidewalk. 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.

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. "Street Tree" means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to (or specified distance from) the portion of the street reserved for vehicular traffic. This also includes trees planted in planting strips within the roadway right-of-way, i.e., islands, medians, pedestrian refuges.

K. "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.

L. "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.

M. "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.

N. "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.

O. "Specimen or heritage tree" means a native tree with a DBH of 23" or more.

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--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 for each tree to be removed. Funds received shall be distributed towards administrative and site inspection activities.
4. Any tree removal on private property related to a demolition, lot clearing, zoning or construction permit, site plan approval or zoning variance is governed by the application procedure set forth in Chapter 150, Section 21, of the Borough's Municipal Code and may be subject to additional requirements as determined in the sole discretion of the Borough.

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 IV, 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 Appendix A.
3. Replacement tree(s) shall:
 - a. Have an equal or greater DBH than the tree removed or meet the Tree Replacement Criteria in the table 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:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)	Replacement Fee in Lieu of Planting
1	6" to <13"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$250
2	13" to <23"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$500
3	23" to <33"	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$1,000
4	≥33"	Replant 5 trees with minimum tree calipers of 1.5" for each tree removed	\$2,000

C. Replacement alternative:

If the Borough determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall pay the replacement fee in lieu of planting as listed in the table above. All fees in lieu of planting shall be deposited into the Borough's Community Tree Fund 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, with a DBH of 3" or more in the Municipal Right-of-Way shall submit a Tree Removal or Planting – Municipal Right-of-Way Application 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, Hazard Trees will be removed by the Public Works Department with no fee or replacement requirement. Healthy trees of species listed in Appendix A 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 Appendix A list and will be reviewed by members of the Tree Committee to ensure suitability as street trees in that location.

SECTION IV. 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 written justification as follows:

- A. Lots that will have a minimum number of healthy, native, trees with a DBH of 6" from the Appendix A list after the proposed removal. An assessment from a LTE or certified arborist attesting to the species and DBH size must accompany the application in order to meet this exemption. The required trees vary according to lot size:
 1. Under 5000 square feet – three (3) trees of which one (1) must be a medium or large species;
 2. 5000 square feet -- three (3) trees of which two (2) must be a medium or large species;
 3. Over 5000 square feet and less than 7500 square feet – four (4) trees of which three (3) must be a medium or large species;
 4. 7500 to less than ten thousand square feet – five (5) trees of which four (4) must be a medium or large species;
 5. Ten thousand (10,000) or more shall meet the requirements of a standard lot for each 5000 square feet.
- B. 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.

- C. Hazard trees may be removed with no replacement requirement so long as the conditions in Section II.D and Section IV.A. are satisfied.

SECTION V. Enforcement:

This ordinance shall be enforced by the Police Department, 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 VI. 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 removed 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 Fund.

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 VIII. 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
Busch						
Moffatt						
vanHeeswyk						

ATTEST:

Elaine L. Wallace, Borough Clerk

Catherine Busch, Commissioner

Robert Moffatt, Mayor

Anita vanHeeswyk, Commissioner

FIRST READING: August 8, 2024
PUBLICATION: August 14, 2024
PUBLIC HEARING: August 27, 2024
PUBLICATION: September 4, 2024

Appendix A

Approved list of Replacement Tree Species for Cape May Point

Common Name	Scientific Name	Height*	Planting Season
Red Maple	<i>Acer Rubrum</i>	Medium	Spring
Canadian Serviceberry	<i>Amelanchier canadensis</i>	Small	Spring or fall
River Birch	<i>Betula nigra</i>	Medium	Spring
Pignut Hickory	<i>Carya glabra</i>	Large	Spring
Sand Hickory	<i>Carya pallida</i>	Large	Spring or fall
Mockernut Hickory	<i>Carya tomentosa</i>	Large	Spring or fall
Common Hackberry	<i>Celtis occidentalis</i>	Medium	Spring only
Dwarf Hackberry	<i>Celtis tenuifolia</i>	Small	Spring or fall
Flowering Dogwood	<i>Cornus florida</i>	Small	Spring only
Common Persimmon	<i>Diospyros virginiana</i>	Medium	Spring or fall
American Holly	<i>Ilex opaca</i>	Medium	Spring or fall
Black Walnut	<i>Juglans nigra</i>	Large	Spring or fall
Eastern Red Cedar	<i>Juniperus virginiana</i>	Medium	Spring or fall
Sweetgum	<i>Liquidambar styraciflua</i>	Large	Spring
Sweetbay Magnolia	<i>Magnolia virginiana</i>	Small	Spring
Southern Crab Apple	<i>Malus angustifolia</i>	Small	Spring
Red Mulberry	<i>Morus rubra</i>	Medium	Spring or fall
Blackgum	<i>Nyssa sylvatica</i>	Medium	Spring
Shortleaf Pine	<i>Pinus echinata</i>	Medium	Spring or fall
Pitch Pine	<i>Pinus rigida</i>	Medium	Spring or fall
Pond Pine	<i>Pinus serotina</i>	Medium	Spring or fall
Loblolly Pine	<i>Pinus taeda</i>	Large	Spring or fall
Virginia Pine	<i>Pinu virginiana</i>	Small	Spring or fall

Black Cherry	Prunus serotina	Medium	Spring or fall
White Oak	Quercus alba	Large	Spring
Scarlet Oak	Quercus coccinea	Large	Spring
Southern Red Oak	Quercus falcata	Large	Spring
Chestnut Oak	Quercus montana	Large	Spring
Willow Oak	Quercus phellos	Medium	Spring
Post Oak	Quercus stellata	Medium	Spring
Black Oak	Quercus velutina	Medium	Spring
Missouri Willow	Salix eriocephala	Small	Spring
Black Willow	Salix nigra	Medium	Spring
Sassafras	Sassafras albidum	Medium	Spring or fall

*Height: Small (35' and under), Medium (35'-50'), Large 50' and over. Height depends on growing conditions, less height likely in seashore communities.

Planting Tree Care Standards: *Tree Owner's Manual* USDA Forest Service, July 2021. Digital version on Borough website; print copy available upon request.