

This meeting will be held via teleconference. To attend, dial 978-990-5189 and use access code 3921850. All participants will be muted during the business portions of the meeting.

During the Public Portions, the Borough Clerk will instruct anyone who wishes to speak to dial *6 on their phone and then press 1 to confirm or 2 to cancel. Each person will be unmuted and recognized in the order in which they entered the queue. In addition, members of the public may send questions or comments for inclusion during the public portion to the Borough Clerk at ewallace@capemaypoint.org by Tuesday, November 10, 2020 at 2:00 PM.

**AGENDA
BOROUGH OF CAPE MAY POINT
BOARD OF COMMISSIONERS**

BOROUGH MEETING – NOVEMBER 12, 2020 – 6:00 PM

MEETING CALLED TO ORDER / SUNSHINE STATEMENT / FLAG SALUTE

In compliance with the Open Public Meetings Act, Chapter 231, Public Laws of 1975, this meeting was properly advertised in the annual notice and this agenda was properly distributed and duly posted on the Borough Hall bulletin board as the required notice under the Statute.

ROLL CALL: Commissioner Mullock, Commissioner vanHeeswyk, Mayor Moffatt

COMMISSIONERS' REPORTS/DISCUSSION

- Request for Letter of Support

ADMINISTRATOR'S REPORT

PUBLIC COMMENT ON AGENDA ITEMS ONLY

APPROVAL OF MINUTES

September 22, 2020 Work Session
October 8, 2020 Regular Meeting
October 27, 2020 Work Session

ORDINANCES FOR INTRODUCTION / PUBLICATION - None

RESOLUTIONS

- 119-20 Authorizing the Borough of Cape May Point to Submit an Application for a Rural Business Development Grant to the United States Department of Agriculture for the Cape May Point Science Center
- 120-20 Authorizing the Disposal of Surplus Property
- 121-20 Approval of Bill List

ORDINANCES FOR SECOND READING / PUBLIC HEARING / ADOPTION

- 10-2020 An Ordinance Amending Borough Code Chapter 150 ("Zoning"), Article II ("Definitions") and Article III ("Prohibited Uses"), to Make Swimming Pools a Prohibited Use in All Zones
- 11-2020 An Ordinance Amending the Borough Code by Adding New Chapter 108 ("Maintenance Requirements for Existing Nonconforming Swimming Pools and Spas")
- 12-2020 An Ordinance Amending Borough Code Chapter 113 ("Nuisances; Public Health") to Add New Article II ("Prohibitions against Bamboo")

PUBLIC PORTION

ADJOURNMENT

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

RESOLUTION 119-20

**RESOLUTION AUTHORIZING THE BOROUGH OF CAPE MAY POINT TO SUBMIT
AN APPLICATION FOR A RURAL BUSINESS DEVELOPMENT GRANT
TO THE UNITED STATES DEPARTMENT OF AGRICULTURE
FOR THE CAPE MAY POINT SCIENCE CENTER**

WHEREAS, the Borough of Cape May Point (hereinafter the "Borough") plans to submit to the United States Department of Agriculture, Rural Development (hereinafter "USDA") an application for a Rural Business Development Grant; and

WHEREAS, the Borough wishes to pursue through the Program, funding for a Feasibility Study for the Cape May Point Science Center, and

WHEREAS, the Rural Business Development Grant is a competitive grant designed to support technical assistance, training and other activities leading to the development or expansion of small and emerging businesses in rural New Jersey.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Cape May Point, County of Cape May of New Jersey, as follows:

1. All necessary action, including the filing of formal applications, be taken to pursue USDA funding for the proposed Feasibility Study for the Cape May Point Science Center.
2. The Borough is authorized to accept all funding through the United States of America, acting through Rural Development's Rural Business Development Grant Program.
3. The duly authorized representatives of the Borough, including the Mayor and the Clerk of the Borough are hereby authorized to be an Administrator and a Representative to execute the necessary documents to receive a grant funds from the USDA.

Recorded Vote:	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of Cape May Point, County of Cape May, New Jersey, at a meeting held on November 12, 2020.

Municipal Clerk

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

RESOLUTION 120-20

AUTHORIZING THE DISPOSAL OF SURPLUS PROPERTY

WHEREAS, the Borough of Cape May Point wishes to dispose of Borough property that has been deemed surplus and no longer needed for public use; and

WHEREAS, the State of New Jersey permits the sale of surplus property no longer needed for public use through the use of an online auction service, pursuant to the Local Unit Electronic Technology Pilot Program and Study Act, P.L. 2001,c.30.; and

WHEREAS, the Borough of Cape May Point has a 2008 Polaris Ranger 700 6x6 wishes to sell this surplus property at an online auction.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Cape May Point, New Jersey, that the aforementioned property has been deemed surplus and no longer needed for public use and is hereby authorized to post an offer to sell the item on an auction website as follows:

Online Auction Site:	www. govdeals.com
Length of Online Auction:	Minimum of 14 days
Auction Fees:	7.5% of the total amount of all items sold (to be paid through proceeds of the sale)
Method of Payment:	US Currency - Cash, Certified Check, Money Order or Traveler's Checks
Shipping:	The buyer is responsible to pickup, load and transport all items purchased
Possession:	When payment has been made in full
Other Terms:	Items are sold "As Is Where Is" and without warranty. Payment in full is due no later than five (5) business days from the time and date of the Buyer's Certificate (issued by Gov Deals Email) being received.
Minimum Bid:	To be determined on an item for item basis

Recorded Vote:	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of Cape May Point, County of Cape May, New Jersey, at a meeting held on November 12, 2020.

Municipal Clerk

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

RESOLUTION 121-20

APPROVAL OF BILL LIST

WHEREAS, the Borough of Cape May Point has received certain claims against it by way of voucher, which have been duly reviewed by the Board of Commissioners.

NOW THEREFORE BE IT RESOLVED, by the Board of Commissioners of the Borough of Cape May Point, County of Cape May, State of New Jersey that the attached claims are hereby approved for payment in the total amount of \$393,898.47.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

I hereby certify that the foregoing is a true copy of a Resolution duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of Cape May Point, County of Cape May, New Jersey, at a meeting held on November 12, 2020.

Municipal Clerk

Range of Checking Accts: OTHER to OTHER Range of Check Ids: 15784 to 15799
Report Type: All Checks Report Format: Condensed Check Type: Computer: Y Manual: Y Dir Deposit: Y

Check #	Check Date	Vendor	Amount Paid	Reconciled/Void	Ref Num
PO #	Description			Contract	
15784	11/12/20	BR001 BROCK D. RUSSELL LLC			1830
20-00588	SOLICITOR SERV JULY,AUG, SEPT		3,750.00		
15785	11/12/20	CAP31 CAPE MINING & RECYCLING LLC			1830
20-00576	STUMPS/TREE PARTS		22.80		
15786	11/12/20	COD01 CODY'S POWER EQUIPMENT			1830
20-00527	BELT, CUTTER DECK		47.95		
15787	11/12/20	COU03 COUNTY OF CAPE MAY			1830
20-00575	FUEL SEPTEMBER 2020		248.01		
20-00582	4TH QU TAXES 2020		374,982.27		
			<u>375,230.28</u>		
15788	11/12/20	DAT01 DATA NETWORK SOLUTIONS			1830
20-00578	TELEPHONE		930.33		
15789	11/12/20	DEL01 DELL MARKETING LP			1830
20-00532	NEW DELL POWEREDGE SERVER		3,278.02		
15790	11/12/20	ELAIN005 ELAINE WALLACE			1830
20-00599	PETTY CASH REIMBURSEMENT		96.92		
15791	11/12/20	EME01 EMELIA OLESON			1830
20-00596	2020 CLEAN COMM COORDINATOR		200.00		
15792	11/12/20	GOLDM005 GOLD MEDAL ENVIRONMENTAL			1830
20-00579	TRASH/RECYCLING		5,283.33		
15793	11/12/20	JAN01 JANET M WESTCOTT			1830
20-00594	POLLWORKER/JUDGE		225.00		
15794	11/12/20	MAR15 MARY IMPERATO			1830
20-00593	POLLWORKER		200.00		
15795	11/12/20	MIC07 MICHAEL WHIPPLE			1830
20-00598	REFUND OVERPAY EXCESS WATER		267.80		
15796	11/12/20	MICHA005 MICHAEL DORAN			1830
20-00595	POLL WORKER		200.00		
15797	11/12/20	SHE01 SHEPANSKI'S AUTO REPAIR			1830
20-00574	REPAIRS		3,766.04		
15798	11/12/20	STE02 STEPHENIE S. MAGGIO			1830
20-00591	POLL WORKER		200.00		
15799	11/12/20	THOMA005 THOMAS IMPERATO			1830
20-00592	POLL WORKER		200.00		

Check #	Check Date	Vendor	Reconciled/Void		Ref Num
PO #	Description		Amount Paid		Contract
15799	THOMAS IMPERATO				
		Continued			
Report Totals			<u>Amount Paid</u>	<u>Amount Void</u>	
	Checks:	<u>Paid</u>	<u>Void</u>		
		16	0	393,898.47	0.00
	Direct Deposit:	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0.00</u>
	Total:	16	0	393,898.47	0.00

Totals by Year-Fund Fund Description	Fund	Budget Total	Revenue Total	G/L Total	Total
CURRENT	0-01	390,152.65	0.00	0.00	390,152.65
	0-05	<u>267.80</u>	<u>0.00</u>	<u>0.00</u>	<u>267.80</u>
Year Total:		390,420.45	0.00	0.00	390,420.45
	C-04	3,278.02	0.00	0.00	3,278.02
	G-02	200.00	0.00	0.00	200.00
Total of All Funds:		<u><u>393,898.47</u></u>	<u><u>0.00</u></u>	<u><u>0.00</u></u>	<u><u>393,898.47</u></u>

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

ORDINANCE NO. 10-2020

**AN ORDINANCE AMENDING BOROUGH CODE CHAPTER 150
("ZONING"), ARTICLE II ("DEFINITIONS") AND ARTICLE III
("PROHIBITED USES"), TO MAKE SWIMMING POOLS A PROHIBITED
USE IN ALL ZONES**

WHEREAS, the Master Plan of the Borough of Cape May Point sets forth certain goals and objectives, namely the preservation of Lake Lilly in its restored state; the preservation of a sustainable habitat for fish and other wildlife; the preservation and the enhancement of native and indigenous vegetation; the preservation and conservation of potable water and the preservation of open space where and whenever possible;

WHEREAS, the Master Plan under "Recommendations" makes note of the fact that Cape May Point is dependent on desalinized water from the City of Cape May for drinking and cooking and consequently water conservation must be emphasized and further that the preservation of open space shall be deemed to mean not only open space in public areas, but also sight lines and room for privacy and noise isolation on private lots;

WHEREAS, the Master Plan under "Policy" provides that the code provisions designed to manage development should include standards for the preservation of the maximum amount of permeable land surface on building lots as possible and further notes that prospective conservation problems in the Borough include the loss of mating and migratory bird and other beach related wildlife due to environmental derogation, light pollution and lack of water recharge soils as well as the ever escalating cost of water as regional demand increases;

WHEREAS, the Master Plan further provides under "Policy" that in order to control the quality of water runoff that drains into Lake Lily, homeowners and gardeners throughout the Borough should be encouraged not to use chemical fertilizers;

WHEREAS, existing Section 150-11 ("Permitted Uses") makes no reference to "swimming pools" as a permitted primary or accessory use in the R-1 Zone;

WHEREAS, existing section 150-4 ("Prohibited Uses Enumerated") likewise makes no reference to swimming pools;

WHEREAS, until very recently there were no swimming pools located within the R-1 Zone which is the sole residential district in the Borough;

WHEREAS, the Borough of Cape May Point finds that although swimming pools under legal precedent may be permitted in residential zones as an implied accessory use such a use is incompatible with the objectives of the Borough's Master Plan;

WHEREAS, the Borough of Cape May Point further finds that said pools place inordinate demands on the Borough's Water and Sewer Utility. In particular, swimming pools require the excessive consumption of water which must be purchased at great expense from the City of Cape May. In addition, pools may cause the disposal of waste water containing sediment as well as other potential pollutants into the Borough's storm sewer system which drains into Lake Lily and may thereby endanger the delicate ecosystem of the Lake;

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point that Chapter 150, Article II ("Definitions") and Article III ("Prohibited Uses") is hereby amended as follows:

SECTION 1

ARTICLE II Definitions

§ 150-3 TERMS DEFINED.

Except where the context shows clearly that a different meaning is intended, the following terms, as used in this chapter, shall have the meanings indicated:

ACCESSORY BUILDING

Shall mean a single-story building, including a private garage, on the same lot but subordinate to the main building and used exclusively for a purpose customarily incidental to that of the main building. No cooking facilities, toilet facilities or living quarters can exist in an accessory building.

ACCESSORY USE

Shall mean a use on the same lot with but subordinate and customarily incidental to the main use of the lot or of the main building thereon.

ARBOR/TRELLIS/PERGOLA

Shall mean a freestanding construction, including overhead members, and which is less than 50% enclosed in each plane and is used for decorative purposes or growing certain plants.

BOUNDARIES OF LOT OR PROPERTY LINE

Shall mean the boundary lines of a parcel of land as fixed by recorded deed of conveyance or by map filed in the office of the County Clerk.

BUILDING

Shall mean any structure, including but not limited to open or closed attached porches, decks, enclosed patios, annexes or additions, that requires for its use a fixed location

on or above the land; provided, however, that an interior change or alteration of the structure which shall create additional living quarters shall also be deemed to be a "building" for the purposes of this chapter. This definition excludes driveways, ground level patios and sidewalks.

BUILDING LINE

Shall mean a line located on the lot parallel with the (front) street line and at a distance therefrom equal to the depth of the required front yard.

CONSTRUCT

Shall mean in addition to its usual meaning, includes the meaning of the words "reconstruct," "relocate," "build," "rebuild," "erect," "alter," "adapt" and "arrange."

DWELLING

a. SINGLE-FAMILY DWELLING

shall mean a wholly detached building constructed or adopted for use exclusively as a place of residence for one-family only.

b. MULTIPLE-FAMILY DWELLING

shall mean a wholly detached building constructed or adopted for use as a place of residence for two or more families.

FENCE

Shall mean a freestanding, constructed barrier used to delineate a particular area, restrict ingress to or egress from an area or for decoration.

GROSS FLOOR AREA

Shall mean the total of (1) all floor area within the horizontal and vertical perimeter of the outside walls of the main building, without deduction for hallways, stairs on all levels, closets, thickness of walls, columns or other features; (2) the area of the floor below that portion of habitable attic ceiling, with ceiling height at or above four feet; and (3) all occupiable or habitable areas with a ceiling at least seven feet above the floor surface (including an earthen floor) and enclosed on at least three sides and located beneath other gross floor area. Decks and porches shall be included. Attached garages not located beneath other gross floor area, grade level crawl spaces, stoops and steps shall not be included.

The inclusion of the areas specified in (3) above in Gross Floor Area shall become effective on July 1, 2004. Structures existing prior to July 1, 2004 and proposed structures for which a valid Zoning Permit has been issued prior to July 1, 2004 otherwise in compliance with maximum gross floor area except for the provisions of (3) above shall be deemed to be in compliance with maximum floor area.

HABITABLE ATTIC

Shall mean the space between the ceiling beams of the top story of a building and its roof rafters which has a stairway as a means of access and egress and in which the ceiling area, at a height of seven and one-third (7 1/3) feet above the attic floor, is not more than 1/3 of the area of the next floor below.

LOT

Shall mean any separate parcel of land having boundaries fixed by recorded deed of conveyance or by map filed in the office of the County Clerk.

NONCONFORMING LOT

Shall mean a lot, the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment. (N.J.S.A. 40:55D-5)

NONCONFORMING STRUCTURE

Shall mean a structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment. (N.J.S.A. 40:55D-5)

NONCONFORMING USE

Shall mean a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment. (N.J.S.A. 40:55D-5)

PARKING SPACE

Shall mean an open space or garage on a lot, used for parking operative motor vehicles, the area of which is not less than 200 square feet exclusive of drives, aisles or maneuvering areas and to which there is direct and unobstructed access from a street.

PERSON

Shall mean and include a natural person, copartnership, association, corporation and any number of them.

POOL

See definition of "Swimming Pool."

POOL, SPA

See definition of "Swimming Pool."

PRIVATE GARAGE

Shall mean a garage not conducted as a business or used for storage of more than one commercial vehicle and two pleasure cars.

ROOMING HOUSE

Shall mean a dwelling having rooms to let without cooking facilities for transient paying guests.

SCREEN

Shall mean a principally freestanding constructed protective device or object used to conceal or protect a particular interior local area of the property limited to 12 feet in length and six feet above the average elevation of the lot.

SIGNS

Shall mean any object, device, display or structure or part thereof, which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, produce, service, event or location by any means including words, letters, figures, designs, symbols, pictures, colors, illumination or projected images.

SPA

See definition of "Swimming Pool."

SPECIAL BARRIER-FREE ACCESS

Shall mean a ramp, landing walkway or other constructed feature to be located on the exterior of a residential dwelling which is deemed necessary to provide access not otherwise obtainable to the interior of the building.

STREET LINE

Shall mean the side line of a street, road or highway as dedicated to the public or as otherwise acquired by the Borough, County or State for public use, and, for the purpose of this chapter, is the boundary line between the public way and the adjacent land.

SWIMMING POOL

Any structure intended for swimming, recreational bathing or wading that contains water over 24 inches (610 mm) dep. This includes in-ground, above ground and on-ground pools, hot tubs, spas and fixed-in place wading pools.

TRAILER

Shall mean a vehicle with or without its own motive power and mounted on wheels or designed to be mounted and transported.

VEGETATION

Shall mean plants of the area, including, but not limited to, flowers, shrubs and trees.

YARD

a. FRONT YARD

Shall mean the required open space the full width of the lot, extending from the front boundary or property line of the lot to the nearest main building exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width.

b. REAR YARD

Shall mean the required open space the full width of the lot, extending from the rear boundary line or property line of the lot to the nearest main building exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width.

c. SIDE YARD

Shall mean the required open space from the front yard to the rear yard on the lot, extending from the side boundary line or property line of the lot to the nearest main building, exclusive of overhangs and decorative projections up to two and one-half (2 ½) feet in horizontal width (except that no portion of any building, including overhangs and decorative projections shall extend closer than five feet to any side or boundary line or side property line).

SECOND 2

ARTICLE III Prohibited Uses

§150-4. PROHIBITED USES ENUMERATED. [1988 Code § 150-4; Ord. No. 463-02; Ord. No. 03-2018]

The use of lands and buildings permitted by this chapter shall not be construed to include the following:

- a. The erection or use of any tent for dwelling purposes.
- b. The use of any trailer, travel trailer, motor home, mobile manufactured home or similar

vehicle for dwelling purposes and the use of land as a collective parking place or camp for said vehicles.

- c. A used car lot.
- d. Roller-skating rinks.
- e. Sand or gravel pits.
- f. Tourist camp, hotel or motel.
- g. Open-air theaters.
- h. Livery or boarding stables.
- l. Training or boarding kennels.
- j. Commercial warehouses, contractors' storage yards, junkyards, secondhand lumber storage yards or other building materials storage.
- k. Commercial laundries, cleaning and dyeing works, slaughtering of poultry or animals, processing of foods, meat or fish smoking, rendering of fats and by-products.
- l. Any commercial process of manufacture, assembly or treatment which is not clearly incidental to a retail business conducted on the premises or which constitutes a nuisance by reason of noise, odor, dust, smoke or vibration.
- m. The dismantling or storage of wrecked, disabled or dismantled automobiles or airplanes or parts thereof.
- n. (Reserved)[1]
- o. Club, fraternity, sorority and boat houses, except that this shall not be construed to prohibit the moving of existing buildings necessitated by shoreline erosion.
- p. Row houses.
- q. Public garages and motor vehicle service stations.
- r. Apartments or living quarters in basements or below finished grade of lot.
- s. Public auction marts; road stands.
- t. Dumping of garbage, rubbish, refuse or other objectionable material for the purpose of regrading or landscaping land on which deposited.
- u. Any permitted sign erected within the Borough of Cape May Point shall not be closer than 15 feet to any public property be it Borough, County, State or Federally owned or owned by any subdivision thereof.
- v. Swimming Pools or spas.

SECTION 3

All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4

Should any provision of this ordinance be deemed invalid for any reason that invalidity shall not affect the remaining provisions of the ordinance, and the provisions and sections of the ordinance are hereby declared to be severable with respect to their validity.

SECTION 5

This ordinance shall take effect twenty (20) days after final passage, according to law.

Final Adoption Vote	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

Robert Mullock, Commissioner

Anita vanHeeswyk, Commissioner

Robert Moffatt, Mayor

ATTEST:

Elaine L. Wallace, Borough Clerk

FIRST READING: October 8, 2020
PUBLICATION: October 14, 2020
PUBLIC HEARING: November 12, 2020
PUBLICATION: November 18, 2020

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

ORDINANCE NO. 11-2020

**AN ORDINANCE AMENDING THE BOROUGH CODE BY ADDING
NEW CHAPTER 108 (“MAINTENANCE REQUIREMENTS FOR
EXISTING NONCONFORMING SWIMMING POOLS AND SPAS”)**

WHEREAS, the Board of Commissioners of the Borough of Cape May Point is simultaneously with this amendment amending Chapter 150 of the Borough Code to make swimming pools and spas prohibited uses;

WHEREAS, there are currently a number of pools constructed or permitted which will become nonconforming upon adoption of the aforesaid amendment to Chapter 150;

WHEREAS, the Board of Commissioners finds that it is necessary to establish standards for the maintenance of existing pools as well as the discharge or backwash of pool or spa water in order to prevent environmental degradation of Lake Lily, damage to the Borough’s storm water collection system as well as unsightly and annoying conditions to neighboring property owners and/or their tenants;

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point that the Borough Code is hereby amended to add new Chapter 108 as follows:

SECTION 1

Chapter 108

**MAINTENANCE REQUIREMENTS FOR
EXISTING SWIMMING POOLS AND SPAS**

§108-1. POOL MAINTENANCE; DISCHARGES.

- a. Disinfection: Equipment shall be provided for the disinfection of all pool water. The disinfectant shall be introduced into the re-circulation system ahead of the filters.
- b. Absolutely no discharge of any pool or spa shall be made into the Borough sanitary system or into the Borough storm water collection system or into the ground. All discharges shall be made into a State of New Jersey Department of Environmental Protection approved sewage sanitation truck and removed from the site. Violations of this subsection shall subject such

violator to the penalty provisions of this Chapter. For the purpose of this Chapter, "discharge" shall mean and include the removal or emptying of any pool or spa, either completely or partially, of water that has been or is likely to have been treated with chemicals.

§108-2. OTHER PROHIBITED ACTIONS.

- a. Any person who discharges, causes a discharge, or otherwise allows or permits an improper discharge into the Borough's Sanitary Sewer System or into the Borough's storm water collection system or into the ground engages in conduct that constitutes an imminent threat to the public health and safety and, in addition, such conduct constitutes a public nuisance.
- b. The Code Enforcement Official, the Borough Engineer, or the Director of Public Works, or his designee, shall be authorized to issue a STOP WORK ORDER which shall operate as follows:
 1. All work of an improper or illegal nature such as to violate any ordinance, or any law or regulation of any State or Federal agency or which constitutes a nuisance or causes any unsafe, hazardous or other condition which poses a threat to public health or safety immediately cease.
 2. All activity contributing to or causing the issuance of the STOP WORK ORDER shall not be resumed until such time as a corrective action plan is submitted to and approved by the Code Enforcement Official, the Borough Engineer or the Director of Public Works or his designee shall not be construed as in any way affecting the authority conferred upon the Construction Official under the Uniform Construction Code, and the regulations promulgated thereunder.

§ 108-3. ENFORCEMENT.

This section shall be enforced by any of the following:

Borough Engineer
Code Enforcement Official
Director of Public Works and/or his designee
Police Department officers and members
Cape May County Department of Health
Such other officer or official so authorized by law.

§108-4. VIOLATIONS AND PENALTY.

Any person violating any of the provisions of this section shall, upon conviction, be subject to one or more of the following:

- a. For a First Offense.
 1. A fine in the minimum amount of \$100 not to exceed the sum of one thousand (\$1,000) dollars; and/or;
 2. Incarceration for a term not to exceed ninety (90) days; and/or
 3. A. Period of community service for a period not exceeding ninety (90) days.
- b. For a Second or subsequent Offense:
 1. A fine in the minimum amount of one hundred (\$100) dollars and not to exceed the sum of two thousand (\$2,000) dollars;
 2. Incarceration for a term not to exceed ninety (90) days; and/or
 3. By a period of community service for a period not exceeding ninety (90) days.

108.5. VIOLATIONS OCCURRING WITHIN ONE YEAR.

Any person convicted of violating this section within one year of the date of a previous violation and who was fined for the previous violation, shall be sentenced by the Court to an additional fine as a repeat offender. The additional fine imposed by the Court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the section, but shall be calculated separately from the fine imposed for the violation of the section. (See N.J.S.A. 40:49-5)

SECTION 2

All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3

Should any provision of this ordinance be deemed invalid for any reason that invalidity shall not affect the remaining provisions of the ordinance, and the provisions and sections of the ordinance are hereby declared to be severable with respect to their validity.

SECTION 4

This ordinance shall take effect twenty (20) days after final passage, according to law.

Final Adoption Vote	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

Robert Mullock, Commissioner

Anita vanHeeswyk, Commissioner

Robert Moffatt, Mayor

ATTEST:

Elaine L. Wallace, Borough Clerk

FIRST READING: October 8, 2020

PUBLICATION: October 14, 2020

PUBLIC HEARING: November 12, 2020

PUBLICATION: November 18, 2020

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

ORDINANCE 12-2020

**AN ORDINANCE AMENDING BOROUGH CODE CHAPTER 113
("NUISANCES; PUBLIC HEALTH") TO ADD NEW ARTICLE II
("PROHIBITIONS AGAINST BAMBOO")**

WHEREAS, that certain types of the bamboo plant are invasive and often difficult to control, and such bamboo can and has caused significant damage to properties in the Borough of Cape May Point. The purposes of this section are to preserve and protect private and public property from the damaging spread of bamboo, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of the Borough of Cape May Point.

NOW THEREFORE BE IT ORDAINED by the Board of Commissioners of the Borough of Cape May Point that Chapter 113 of the Borough Code is hereby amended as follows:

SECTION 1

**ARTICLE I
NUISANCES, PUBLIC HEALTH**

§ 113-1 ADOPTION OF STANDARDS.

A code defining and prohibiting certain matters, things, conditions or acts, and each of them, as a nuisance; prohibiting certain noises or sounds; requiring the proper heating of apartments; prohibiting the lease or rental of certain buildings; prohibiting spitting in or upon public buildings, conveyances or sidewalks; authorizing the inspection of premises by an enforcing official; providing for the removal or abatement of certain nuisances and recovery of expenses incurred by the Board of Health in removing or abating such nuisances; and prescribing penalties for violations is hereby established pursuant to Chapter 188, Laws of 1950, N.J.S.A. 26:3-69.1 to 26:3-69.6. A copy of said code is annexed hereto and made a part hereof without the inclusion of the text thereof herein.

§ 113-2 TITLE.

The code established and adopted by this chapter is described and commonly known as the "Public Health Nuisance Code of New Jersey (1953)."

§ 113-3 COPIES OF CODE ON FILE.

Three copies of said Public Health Nuisance Code of New Jersey (1953) have been placed on file in the office of the Municipal Clerk upon the introduction of this chapter and will remain on file there for use and examination by the public.

§ 113-4 VIOLATIONS AND PENALTIES.

Any person who violates or neglects to comply with any provision of this chapter 113 or code established herein or notice issued pursuant thereto shall, upon conviction thereof, be liable to a penalty of not less than \$2 nor more than \$500 for each violation. (N.J.S.A. 26:3-70)

SECTION 2

ARTICLE II PROHIBITIONS AGAINST BAMBOO

§113-5. BAMBOO PLANTING PROHIBITED; CONTAINMENT AND REMOVAL.

It is determined that certain types of the bamboo plant are invasive and often difficult to control, and such bamboo can and has caused significant damage to properties in the Borough of Cape May Point. The purposes of this section are to preserve and protect private and public property from the damaging spread of bamboo, to protect indigenous and other plant materials from the invasive spread of bamboo, and to maintain the general welfare of the residents of the Borough of Cape May Point.

A. Prohibition.

No owner, tenant or occupant of a property, or person, corporation or other entity, shall plant, install or cause or permit the planting or installation of plant species commonly known as "running bamboo" upon any property located within the Borough of Cape May Point. For the purposes of this section, "running bamboo" means any bamboo in the genus *Phyllostachys*, including *Phyllostachys aureosulcata*.

B. Duty to confine.

In the event any species commonly known as "running bamboo" is located upon any property within the Borough of Cape May Point, prior to the effective date of this prohibition, the owner and occupant of said property shall jointly and severally be required to confine such species to prevent the encroachment, spread, invasion or intrusion of same onto any other private or public property or public right-of-way. In lieu of confining the species, the property owner or occupant may elect to totally remove the bamboo from the property and all affected properties. Failure to properly confine such bamboo shall require removal as set forth below. The cost of said removal shall be at the bamboo property owner's expense. This duty to confine shall not apply if the property owner and/or occupant can establish to the satisfaction of the Code Enforcement Officer that the bamboo which is on his/her property at the time of the adoption of this article originated on another property.

C. Removal.

(1) In the event running bamboo is present on the effective date of this prohibition and a complaint is received by the Borough regarding an encroachment of any bamboo plant or root, and the Code Enforcement Officer of the Borough, after observation and/or inspection, determines that there is an encroachment or invasion on any adjoining/neighborly private or public property or public right-of-way (hereinafter, "the affected property"), the Borough shall serve notice to the bamboo property owner, in writing, that the bamboo has invaded other private or public properties or public rights-of-way and demand remediation of the encroachment of the bamboo from the affected property, and demand approved confinement against future encroachment. Notice shall be provided to the bamboo property owner, as well as to the owner of the affected property, by certified, return-receipt-requested mail and regular mail. Within 45 days of receipt of such notice, the bamboo property owner shall submit to the Code Enforcement Officer of the Borough, with a copy to the owner of the affected property, a plan for the remediation of the encroachment of the bamboo from the affected property, which plan shall include restoration of the affected property after remediation of the encroachment. Within 120 days of receipt of the Code Enforcement Officer's approval of the plan of remediation and restoration, the remediation and restoration shall be completed to the satisfaction of the Code Enforcement Officer of the Borough.

(2) If the bamboo property owner does not accomplish the remediation of the encroachment from such other private or public property or public right-of-way in accordance herewith, the Code Enforcement Officer of the Borough of Cape May Point shall cause a citation to be issued, with a penalty up to \$100 for each day the violation continues, enforceable through the Municipal Court of the Borough of Cape May Point. The Administrative Officer may request, and the Municipal Court may grant, a specific performance remedy. The Borough may also institute civil proceedings for injunctive or civil relief.

(3) Nothing herein shall be interpreted as limiting the rights of a private property owner to seek civil relief through a court of proper jurisdiction, nor the institution of civil proceedings against the proper parties.

(4) When an encroachment is upon public property or a public right-of-way and the bamboo property owner and/or occupant has not complied with the written notice provided as set forth above, the Borough of Cape May Point, at its discretion, may remove or contract for the removal of such bamboo from the Borough property or public right-of-way. The cost of such removal shall be the responsibility of the bamboo property owner and occupant and shall be paid or assessed as a lien against the property on which the bamboo growth originated. The cost of said removal from the

Borough-owned property and/or public right-of-way shall include the installation of an appropriate barrier to prevent future bamboo invasion.

D. Replanting prohibited. Any running bamboo either planted or caused to be planted or existing on the effective date of this regulation may not be replanted or replaced once such bamboo is or has become dead, destroyed, uprooted, or otherwise removed.

SECTION 3

All ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

SECTION 4

Should any provision of this ordinance be deemed invalid for any reason that invalidity shall not affect the remaining provisions of the ordinance, and the provisions and sections of the ordinance are hereby declared to be severable with respect to their validity.

SECTION 5

This ordinance shall take effect twenty (20) days after final passage, according to law.

Final Adoption Vote	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Mullock						
vanHeeswyk						
Moffatt						

Robert Mullock, Commissioner

Anita vanHeeswyk, Commissioner

Robert Moffatt, Mayor

ATTEST:

Elaine L. Wallace, Borough Clerk

FIRST READING: October 8, 2020
PUBLICATION: October 14, 2020
PUBLIC HEARING: November 12, 2020
PUBLICATION: November 18, 2020