

In compliance with COVID-19 guidelines this meeting will be conducted via electronic conferencing using Zoom <https://www.zoom.us/> or by phone +1 646 558 8656 US (New York)  
**Meeting ID: 860 4443 4025 Passcode: 003379**

**Direct link: <https://us02web.zoom.us/j/86044434025?pwd=UVlvU0ZlaTJ4d1pCTDd6TVlyTFVxUT09>**

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](mailto:ewallace@capemaypoint.org) by 12:00 PM the Wednesday before the meeting.

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

**BOROUGH MEETING – MAY 9, 2024 – 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 Busch, Mayor Moffatt, Commissioner vanHeeswyk

**COMMISSIONERS' DISCUSSION/REPORTS**

**ADMINISTRATOR'S REPORT**

**PUBLIC COMMENT ON RESOLUTIONS ONLY**

**APPROVAL OF MINUTES**

April 23, 2024

**ORDINANCES FOR INTRODUCTION / PUBLICATION - None**

13-2024 An Ordinance Amending Chapter 146, Article II ("Water") of the Code of the Borough of Cape May Point

*Second Reading, Public Hearing, Consideration to Adopt – May 28<sup>th</sup> at 12 pm*

**RESOLUTIONS**

69-24 Award of Contract – Public Works Building Addition & Renovation

70-24 Authorizing Participation in a Shared Services Agreement with West Cape May for Sharing of Equipment – Vacuum Excavator

71-24 Authorizing Participation in a Shared Services Agreement with West Cape May for Sharing of Equipment – Street Sweeper

72-24 Declaring the Official Opening Date of Cape May Point Beaches to Bathing and Fishing for 2024 Season

73-24 Payment of Bills

74-23 Authorizing Advertisement for Bids for Ocean Avenue and Lehigh Avenue Water Main Replacement and Resurfacing Improvements Project

75-24 Authorizing Advertisement for Bids for Water Utility Controls Replacement Project

## **ORDINANCES FOR SECOND READING / PUBLIC HEARING / ADOPTION**

- 11-2024 An Ordinance Amending Chapter 150, Section 150-21 (“Landscaping and Vegetation Plan”) of the Code of the Borough of Cape May Point Chapter
- 12-2024 Tree Removal and Replacement Ordinance

## **PUBLIC PORTION**

### **ADJOURNMENT**

The Board of Commissioners welcomes the participation of interested parties during the public portions of its meetings. For the Board to conduct the business of the Borough in the most productive and open manner possible, questions and comments may be limited to four (4) minutes per person. In addition, each person may only speak once per meeting on a single topic. If you wish to address the Board, please raise your hand and the moderator will try to accommodate everyone in the order in which they are recognized.

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

**RESOLUTION 69-24**

**AWARD OF CONTRACT – PUBLIC WORKS BUILDING ADDITION & RENOVATION**

**WHEREAS**, a request for bids for the Public Works Building Addition & Renovation was advertised in the March 20, 2024 edition of the Cape May Star and Wave; and

**WHEREAS**, in response to said request, sealed bids were received, opened and publicly read by the Municipal Clerk, Elaine Wallace at 1:00 p.m. April 11, 2024; and

**WHEREAS**, R. Maxwell Construction Company, Inc. of Pleasantville, NJ, submitted the lowest of four (4) bids received, which are summarized as follows:

<b>Bidder</b>	<b>Total</b>
R. Maxwell Construction Co., Inc.	\$1,166,500.00
Marino General Construction, Inc.	\$1,192,500.00
Wetherby Construction & Renovation, Corp.	\$1,322,000.00
Ocean Construction, LLC	\$1,684,200.00

**WHEREAS**, the Borough Engineer has determined the bid of R. Maxwell Construction Co., Inc. has been submitted in proper form and the contractor appears qualified to perform the work anticipated under this contract.

**NOW, THEREFORE, BE IT RESOLVED** the Board of Commissioners of the Borough of Cape May Point, County of Cape May, State of New Jersey, hereby awards said contract to R. Maxwell Construction Co., Inc. in the amount of \$1,166,500.00, and authorizes the Mayor and Clerk to execute the contract for same.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

**CERTIFICATION OF AVAILABILITY OF FUNDS**

I, James V. Craft, Chief Finance Officer of the Borough of Cape May Point, hereby certify that funds are available in the General Capital account number C-04-55-998-224 to award a contract for \$1,116,500.00 to R. Maxwell Construction Co, Inc. for Public Works Building Addition and Renovations.

I further certify that this commitment together with all previously made commitments does not exceed the appropriation balance available for this purpose.

Dated: May 9, 2024

Signed: James V Craft  
James V. Craft, Chief Financial Officer

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**RESOLUTION 70-24**

**AUTHORIZING PARTICIPATION IN A SHARED SERVICES AGREEMENT  
WITH WEST CAPE MAY FOR SHARING OF EQUIPMENT – VACUUM EXCAVATOR**

**WHEREAS**, the Borough of Cape May Point has purchased a vacuum excavator; and

**WHEREAS**, in the past, the Borough of West Cape May and the Borough of Cape May Point have shared equipment as a convenience and to efficiently and economically provide their residents with necessary services; and

**WHEREAS**, the Borough of West Cape May would like to use the Borough of Cape May Point's vacuum excavator from time to time; and

**WHEREAS**, the governing bodies of Cape May Point and West Cape May would like to formalize this equipment sharing agreement for a five- year term; and

**WHEREAS**, N.J.S.A. 40A:65-1 et seq. permits municipalities to enter into agreements for shared services,

**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, as follows:

1. The provisions of the preamble are incorporated herein by reference.
2. The Borough of Cape May Point agrees to enter into the shared services agreement with the Borough of West Cape May for sharing of the vacuum excavator. A copy of that agreement is attached hereto and incorporated herein.
3. The Mayor and Clerk of Cape May Point are hereby authorized to execute any and all documents necessary to perfect the intent of this Resolution.
4. This resolution shall take effect immediately according to law.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**RESOLUTION 71-24**

**AUTHORIZING PARTICIPATION IN A SHARED SERVICES AGREEMENT  
WITH WEST CAPE MAY FOR SHARING OF EQUIPMENT – STREET SWEEPER**

**WHEREAS**, the Borough of West Cape May will be purchasing a street sweeper; and

**WHEREAS**, in the past, the Borough of West Cape May and the Borough of Cape May Point have shared equipment as a convenience and to efficiently and economically provide their residents with necessary services; and

**WHEREAS**, the Borough of Cape May Point would like to use the Borough of West Cape May’s street sweeper from time to time; and

**WHEREAS**, the governing bodies of Cape May Point and West Cape May would like to formalize this equipment sharing agreement for a five- year term; and

**WHEREAS**, N.J.S.A. 40A:65-1 et seq. permits municipalities to enter into agreements for shared services,

**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, as follows:

1. The provisions of the preamble are incorporated herein by reference.
2. The Borough of Cape May Point agrees to enter into the shared services agreement with the Borough of West Cape May for sharing of the street sweeper. A copy of that agreement is attached hereto and incorporated herein.
3. The Mayor and Clerk of Cape May Point are hereby authorized to execute any and all documents necessary to perfect the intent of this Resolution.
4. This resolution shall take effect immediately according to law.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**RESOLUTION NO. 72-24**

**DECLARING THE OFFICIAL OPENING DATE OF CAPE MAY POINT  
BEACHES TO BATHING AND FISHING FOR 2024 SEASON**

**WHEREAS**, Section 58-11B of the annotated code of the Borough of Cape May Point requires that the commissioners declare by resolution which beaches are open or closed to swimming, fishing and kayaking, and

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

1. The beaches shall open on Saturday, June 15, 2024.
2. Bathing/swimming is allowed on protected beaches and within the designated areas only between the hours of 10 A.M. and 5 P.M. daily.
3. A Protected Beach is defined as one with a Lifeguard stand on the beach occupied by a Borough of Cape May Point certified lifeguard. The Coral Avenue beach will be protected based on the availability of beach patrol staff. **No swimming shall be permitted on unprotected beaches. The Beach Patrol will endeavor to open as many beaches as possible contingent upon the availability of beach patrol staff and the conditions of specific beaches that compromise public safety**
4. All beaches are subject to closure at any time during the summer months at the discretion of the Beach Patrol Chief or his designee.
5. The beaches at Whilldin, Lighthouse and Alexander Avenues are designated as UNPROTECTED and swimming is prohibited at all times. Whilldin will be an unprotected beach due to the short distance to the beach-saver reef. The beach may be occupied; however, no swimming will be allowed at any time. Coral Avenue may be determined unsafe for similar reasons. The Alexander Avenue beach has been declared unsafe for swimming due to unseen, underwater hazards.
6. Additionally, Lighthouse Avenue beach is designated as a Precautionary Zone by the U.S Department of Fish and Wildlife and the New Jersey Department of Fish and Wildlife. The beach may be occupied; however, no swimming and other restrictions will be enforced as deemed necessary.

7. Launching of Kayak's is permitted from the Alexander Avenue beach. Beach tags are required.
8. Fishing from the beach is allowed on all non-bathing areas as designated by lifeguards during regular operating hours from 10 A.M. to 5 P.M. Beach tags are required.
9. All activities described above require beach tags. No person 12 years or older shall bathe at or otherwise use the beaches set forth and in Section 58-7B without having first acquired and then having in his/her possession a proper and effective badge.
10. All or part of the activities may be closed due to no-population or weather, especially lightning, and/or high or dangerous waves, at the discretion of the Chief of the Beach Patrol or his designee. Rules determining the above activities are described in Section 58 of the Code Book and the Operating Manual for the Beach Patrol.
11. All off-duty working members of the beach patrol do not require beach tags as they are 'on-call' at all times. On-call is defined as assisting emergency situations as needed on the lifeguards' days off.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

#### Certification

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**RESOLUTION 73-24**

**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 \$560,590.30.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk



Range of Checking Accts: OTHER to OTHER Range of Check Ids: 17988 to 18006  
Report Type: All Checks Report Format: Condensed Check Type: Computer: Y Manual: Y Dir Deposit: Y

Check # PO #	Check Date	Vendor Description	Amount Paid	Reconciled/Void	Ref Num Contract
17988 24-00214	05/09/24	ACCES005 ACCESSREC BEACH MATS	15,837.46		1924
17989 24-00222 24-00238	05/09/24	CAP03 CAPE MAY STAR & WAVE LEGAL ADVERTISING LEGAL ADVERTISING	13.50 33.00 <u>46.50</u>		1924
17990 24-00213 24-00218	05/09/24	CAP14 CAPE MAY COUNTY MUA SOLID WASTE DUMP FEE WASTWATER CHARGE 1ST QU 2024	589.06 <u>75,848.00</u> 76,437.06		1924
17991 24-00226	05/09/24	CAS01 CASA PAYROLL SERVICE PAYROLL	140.50		1924
17992 24-00195	05/09/24	CIT02 CITY OF CAPE MAY MUN COURT 2ND QU	3,872.33		1924
17993 24-00227	05/09/24	COPIE005 COPIERS PLUS COPIER MAINTENANCE	94.66		1924
17994 24-00230	05/09/24	COU03 COUNTY OF CAPE MAY TAXES 2ND QU 2024	446,168.06		1924
17995 24-00229	05/09/24	DAT01 DATA NETWORK SOLUTIONS TELEPHONE	310.11		1924
17996 24-00219	05/09/24	DAV01 DAVE'S TRASH REMOVAL DUMP FEE	530.12		1924
17997 24-00223	05/09/24	GREEN005 GREENMAN-PEDERSEN, INC. 506 CEDAR AVENUE PROJECT	482.50		1924
17998 24-00234	05/09/24	GRR01 GRR CONSULTING SERVICES LLC CONSULTING SERV APRIL 2024	4,750.00		1924
17999 24-00209	05/09/24	KIN01 KINDLE FORD PARTS	592.80		1924
18000 24-00224	05/09/24	MARIE005 MARIE HOOD REIMBURSEMENT	60.00		1924
18001 24-00221	05/09/24	MIT02 MITCHELL HUMPHREY & CO. ANNUAL MAINT GOV SOFTWARE SOLU	1,590.00		1924
18002 24-00248	05/09/24	NAT04 VAN EMBDEN, NATHAN, ESQUIRE SOLICITOR ADMIN	1,130.00		1924

May 6, 2024  
02:30 PM

BOROUGH OF CAPE MAY POINT  
Check Register By Check Id

Page No: 2

Check # PO #	Check Date	Vendor Description	Amount Paid	Reconciled/Void	Ref Num Contract
18003 24-00231	05/09/24	ORIGI005 ORIGINAL WATERMEN, INC. UNIFORMS	1,522.25		1924
18004 24-00216	05/09/24	RI001 RIO SUPPLY, INC REGISTER	5,500.00		1924
18005 24-00220	05/09/24	VER01 VERIZON PHONE BILLS	290.29		1924
18006 24-00212	05/09/24	VIL01 NAPA AUTO PARTS STATEMENT	1,235.66		1924

Report Totals	<u>Paid</u>	<u>Void</u>	<u>Amount Paid</u>	<u>Amount Void</u>
Checks:	19	0	560,590.30	0.00
Direct Deposit:	<u>0</u>	<u>0</u>	<u>0.00</u>	<u>0.00</u>
Total:	<u>19</u>	<u>0</u>	<u>560,590.30</u>	<u>0.00</u>

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Totals by Year-Fund					
Fund Description	Fund	Budget Total	Revenue Total	G/L Total	Total
CURRENT	4-01	477,870.56	0.00	0.00	477,870.56
	4-05	<u>81,457.24</u>	<u>0.00</u>	<u>0.00</u>	<u>81,457.24</u>
Year Total:		559,327.80	0.00	0.00	559,327.80
TRUST ACCOUNT EXPENDITURES	T-13	1,262.50	0.00	0.00	1,262.50
Total of All Funds:		<u>560,590.30</u>	<u>0.00</u>	<u>0.00</u>	<u>560,590.30</u>

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

**RESOLUTION 74-24**

**AUTHORIZING ADVERTISEMENT FOR BIDS FOR  
OCEAN AVENUE AND LEHIGH AVENUE WATER MAIN REPLACEMENT AND  
RESURFACING IMPROVEMENTS PROJECT**

**BE IT RESOLVED** the Board of Commissioners of the Borough of Cape May Point, hereby authorizes the Borough Engineer and Borough Clerk to advertise the appropriate notice to bidders and to receive bids for the Ocean Avenue and Lehigh Avenue Water Main Replacement and Resurfacing Improvements Project in accordance with the New Jersey Public Bidding Laws.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

Certification

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**RESOLUTION 75-24**

**AUTHORIZING ADVERTISEMENT FOR BIDS FOR  
WATER UTILITY CONTROLS REPLACEMENT PROJECT**

**BE IT RESOLVED** the Board of Commissioners of the Borough of Cape May Point, hereby authorizes the Borough Engineer and Borough Clerk to advertise the appropriate notice to bidders and to receive bids for the Water Utility Controls Replacement Project in accordance with the New Jersey Public Bidding Laws.

	MOTION	SECOND	YES	NO	ABSTAIN	ABSENT
Busch						
Moffatt						
vanHeeswyk						

Certification

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 May 9, 2024.

\_\_\_\_\_  
Municipal Clerk

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

**ORDINANCE NO. 11-2024**

**AN ORDINANCE AMENDING CHAPTER 150, SECTION 150-21  
“LANDSCAPING AND VEGETATION PLAN” 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 150 “Zoning” of the Code of the Borough of Cape May Point be and is hereby amended as follows (deletions in ~~strikethrough~~ and additions in underline):

**Section 1.**

**150-21 LANDSCAPING AND VEGETATION PLAN.**

- a. Intent. It is the intent of the Borough of Cape May Point to require a Landscape and Vegetation Plan for several reasons:

To continue its "history of coexistence of human habitation with natural habitat that supports legendary concentrations of migrant and resident wildlife." The trees on both private and public lands are crucial to the continued ability of the Borough to support a "world-class migration spectacle." The maintenance and replacement of the excellent variety of trees is necessary to retain "what is effectively any arboretum and a premier nature sanctuary." (Tree Survey of Cape May Point 2006-2007 by Mark Garland, Garland Cunningham LLC.)

Additionally, there are social, environmental and economic benefits: Trees alter the environment by moderating climate (thus reducing energy costs), improving air quality (by absorbing carbon dioxide, ozone, carbon monoxide and sulfur dioxide), conserving water, and increasing the value of a property.

- b. Prior to the issuance of any zoning permit for the following:
1. An addition or alteration to an existing structure which increases the lot covering in excess of 10%;
  2. An addition or alteration of an existing structure which increases the livable floor area in excess of 10%, based on the original floor area prior to renovation.
  23. Construction of a new residential unit; or

34. Removal of more than 25% of the existing vegetation covering the lot.

A Landscaping and Vegetation Plan must be submitted to and approved by the Cape May Point Zoning Officer to ensure ~~substantial~~ compliance with criteria and requirements set forth in this section, which Landscaping and Vegetation Plan must constitute a minimum of 60% overall area of the lot and incorporate the parameters of paragraph f1 hereafter. For purpose of calculating the area of removal or disturbance of vegetation, trees shall be considered to cover an area equal to that encompassed by their drip line.

**Section 2.** All other ordinances in conflict or inconsistent with this Ordinance are hereby repealed, to the extent of such conflict or inconsistency. Should any portion of this Ordinance be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or repeal the remainder of this Ordinance.

**Section 3.** This ordinance shall take effect twenty (20) days after passage and publication, according to 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: March 26, 2024  
PUBLICATION: April 3, 2024  
AMENDMENT: April 23, 2024  
PUBLIC HEARING: May 9, 2024  
PUBLICATION: May 15, 2024

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

**ORDINANCE NO. 12-2024**

**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, as follows:

**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  $CRR = 6" \times 1.5' = 9'$ .
- 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 Licensed Tree Expert (LTE);
  2. Is dead or dying as determined by a Borough official or a LTE;
  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 LTE;
  5. Is determined to be a threat to public health, safety, and/or welfare by a municipal official or a LTE. 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 municipal official or by a LTE.
- 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 simply 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. 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 3" 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 as determined by a LTE, 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 fee for each tree removal application shall be one hundred fifty (\$150.00) dollars. 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 3" 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. Be replaced in kind with a tree that has 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	3" to <6"	Replant 1 tree with a minimum tree caliper of 1.5" for each tree removed	\$250
2	6" to <13"	Replant 2 trees with minimum tree calipers of 1.5" for each tree removed	\$500
3	13" to <23"	Replant 3 trees with minimum tree calipers of 1.5" for each tree removed	\$1000
4	23" to <33"	Replant 4 trees with minimum tree calipers of 1.5" for each tree removed	\$2000
5	≥33"	Replant 5 trees with minimum tree calipers of 1.5" for each tree removed	\$4000

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--Public Property Application to the Borough Clerk. The application shall include a site plan or drawing describing the location of the tree(s) to be removed.
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 Public Works Department 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. A statement from LTE 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 fee or 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 municipal 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) who 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 with 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.

<b>Final Adoption</b>	<b>MOTION</b>	<b>SECOND</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Busch						
Moffatt						
vanHeeswyk						

**ATTEST:**

\_\_\_\_\_  
Elaine L. Wallace, Borough Clerk

\_\_\_\_\_  
Catherine Busch, Commissioner

\_\_\_\_\_  
Robert Moffatt, Mayor

\_\_\_\_\_  
Anita vanHeeswyk, Commissioner

FIRST READING: April 23, 2024  
PUBLICATION: May 1, 2024  
PUBLIC HEARING: May 9, 2024  
PUBLICATION: May 15, 2024

## Appendix A

### Approved list of Replacement Tree Species for Cape May Point

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