

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

ORDINANCE NO. 494-15

**AN ORDINANCE REGULATING
THE REMOVAL OF TREES AND SHRUBS
ON PUBLIC AND PRIVATE PROPERTY
IN THE BOROUGH OF WEST CAPE MAY**

WHEREAS, the Borough of West Cape May is noted for the number and variety of its trees, including the presence of a number of trees and tree species of special value; and

WHEREAS, the presence of these trees contributes significantly to the quality of life in West Cape May, and

WHEREAS, in recent years, there have been a number of occasions on which trees of significant historic, aesthetic or ecological value have been cut down or otherwise removed, to the detriment of the general public welfare; and

WHEREAS, it is important as well that the Borough's trees be maintained and preserved in a way that does not injure the public health, safety or welfare; and

WHEREAS, pursuant to N.J.S.A. 40:64-1 et seq., the Borough has established a Shade Tree Commission, whose duties include the oversight, care and maintenance of trees and shrubs on both public and, in certain instances, private property in the Borough; and

WHEREAS, to encourage and advance the purposes set forth above, the Borough Commission of the Borough of West Cape May believes it in the public interest to enact regulations governing trees and vegetation on both public and private property;

NOW, THEREFORE, be it ORDAINED by the Borough Commission of the Borough of West Cape May as follows:

Section 1. Preservation of Certain Trees.

A. Purpose. The intent and purpose of this section is to establish standards for the Borough for the protection and preservation of certain trees defined herein growing in a natural state within this municipality.

B. Tree Registry. There is hereby established in the Borough of West Cape May a “Tree Registry,” which shall consist of a list of particular trees, or species of tree, that have special value because of their size, rarity or historical, environmental or aesthetic importance.

The Tree Registry shall be compiled and maintained by the West Cape May Shade Tree Commission, and shall be annually reviewed and approved by the Borough Commission.

C. The restrictions in this section shall apply to the removal of all trees, or species of tree, that are included in the West Cape May Tree Registry, and that grow on any land in the borough, unless such trees are 1) permitted to be removed under the provisions of Sections 1 through 7 above, or 2) are otherwise regulated as part of the Borough’s site plan, subdivision or zoning regulations, as set forth in Subsection 10(F) below. Trees blown over and damaged beyond repair as approved by the Shade Tree Commission may be removed immediately without permit.

D. Permit; application; procedure; fee.

(1) No person shall remove or destroy any tree subject to the regulations contained in this section without first obtaining a tree removal permit from the Borough.

(2) Tree removal permits shall be reviewed, approved and issued by the Shade Tree Commission Office to the owner or his authorized contractor. Permits shall contain the name and address of the owner of the lands upon which the tree or trees sought to be removed are located, and the type, size and location of tree or trees sought to be removed.

(3) The applicant shall file an application for a tree removal permit on forms made available in the office of the Borough Clerk. When he files the application, the applicant shall pay a fee of \$25 for each tree to be removed, but not more than \$100 per application. The fee is reimbursable if tree is not removed.

(4) The tree removal permit shall be valid for one year from the date of issuance. If, at the end of the term, the Shade Tree Commission is satisfied that the standards set by this section have been met and that no violations of this section have taken place, it may renew the permit, subject to any conditions in Subsection E below.

E. The Shade Tree Commission shall grant or deny the permit with reference to the standards contained in this subsection. In applying such standards, the commission may condition the grant of the permit upon such reasonable conditions as may be deemed necessary to effectuate the purpose of this section.

(1) The commission shall be satisfied that the removal of any particular tree is required for the effective utilization of the lands in question, and that no alternative to removal is available.

(2) The commission shall be satisfied that the proposed removal shall not impair the growth and development of the remaining trees on the lands where the proposed tree or trees are located, as well as on adjacent lands.

(3) The commission shall be satisfied that adequate precautions shall be taken with respect to the removal of the tree or trees, so that other trees will not be damaged by removal, and that the roots of remaining trees will not be cut. Wood may be cut to fireplace size and stacked at an appropriate location for owner's use.

(4) Should the commission authorize the removal of any tree, it shall require the applicant to provide a replacement tree of a size and type, and at a location, that the commission shall determine.

F. Removal of trees as part of any development subject to the Borough's site plan, subdivision or zoning regulations shall not require a tree removal permit. That removal shall conform instead to those regulations, and to the relevant determination of the appropriate land use board. Any tree removed from a property in conformance with the Borough's land use regulations shall be deemed to be permitted by this section.

G. Right to hearing. Any person aggrieved by a decision of the Shade Tree Commission shall be entitled to a full hearing before the commission if a written request is filed within ten (10) days from the commission's decision.

H. It shall be a violation of this section, punishable under Subsection I. of this Section, for any person, corporation or entity to remove a tree in order to avoid the provisions of this section.

Section 2. Penalties, Assessments and Costs.

A. Any person violating the provisions of this Chapter shall, upon conviction, be subject to a fine of not less than \$100 nor more than the maximum penalty set forth in Section 1-5 of the Borough Code.

B. In addition to the penalties provided for herein, any person who removes or otherwise destroys a tree in violation of this chapter shall, upon conviction, pay a replacement assessment to the Borough. The replacement assessment of each tree removed or otherwise destroyed in violation of this chapter shall be calculated by multiplying the area of the tree trunk, in square inches, measured 4.5 feet above the ground, times \$27. The area of the tree trunk shall be computed by multiplying 3.14 times the radius squared (ex. a tree having a radius of four inches results in $3.14 \times 4^2 = 50.24$ square inches).

C. Any person, corporation, firm or other entity convicted of violating this chapter within one year of the date of a previous violation of this chapter shall be sentenced by the court to an additional fine as a repeat offender, in accordance with N.J.S.A. 40:69A-29.

D. The Code Enforcement Officer shall be responsible for enforcing of this chapter.

E. Nothing herein shall be deemed to limit the remedies available to the Borough of West Cape May or other person seeking to compel enforcement of this section, and the remedies of compelling replacement of a tree or trees by paying money damages shall be considered cumulative.

Section 3. Amendments to the Borough’s Land Use Ordinances.

A. Section 24-3.9(c)(1)(p) of the Borough’s Site Plan Ordinance shall be amended to add the following sentence: “The site plan shall also include the location, and a description, of any trees on the site that are included in the Borough of West Cape May’s Tree Registry.”

B. Section 24-3.9(c)(1)(v)(1)[a] of the Borough’s Site Plan Ordinance shall be amended as follows: “The features for preservation, including any trees included on the Borough of West Cape May’s Tree Registry.”

C. Section 24-3.9(c)(1)(v)(2)[a][8] of the Borough’s Site Plan Ordinance shall be amended as follows: “Vegetation, including any trees included on the Borough of West Cape May’s Tree Registry.”

D. Section 24-3.9(c)(1)(v)(2)[b] of the Borough’s Site Plan Ordinance shall be amended to add the following sentence. “Should the developer propose to remove any tree included on the Borough of West Cape May’s Tree Registry, he shall specifically indicate how he proposes to replace that tree.”

E. Section 25-5.5(b)(5) of the Borough’s Subdivision Ordinance shall be amended to add the following sentence: “The plan shall show the location of, and describe, any trees on the property that are included in the Borough of West Cape May’s Tree Registry.”

F. Section 25-16.10 of the Borough’s Subdivision Ordinance shall be amended as to add the following sentence: “In particular, to the maximum extent possible, the subdivision should preserve any trees that are included on the Borough of West Cape May’s Tree Registry, and to the extent any such trees must be removed, the applicant shall provide for replacement trees of a size and location acceptable to the board reviewing the subdivision.

G. Section 27-36(f) of the Borough’s Zoning Ordinance shall be amended to add the following sentence: “The proposed removal of any tree that is included on the Borough of West Cape May’s Tree Registry shall be subject to the permit requirements of Section 1(D) of Ordinance 394-15.”

Pamela M. Kaithern, Mayor

Peter. C. Burke, Deputy Mayor

Carol E. Sabo, Commissioner

Elaine L. Wallace, RMC
Municipal Clerk

Introduced: February 25, 2015
Adopted: March 25, 2015