

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

ORDINANCE NO. 529-17

AN ORDINANCE AMENDING SECTION 30 OF THE BOROUGH CODE REGARDING TREES

WHEREAS, Section 30 of the West Cape May Code establishes standards for the protection and preservation of certain trees within the municipality; and

WHEREAS, the Borough Commission of West Cape May has determined that Section 30 should be amended;

NOW, THEREFORE, BE IT ORDAINED by the Borough Commission of the Borough of West Cape May as follows:

Section 1. Section 30 of the Borough Code shall be amended as follows, with all strikethroughs indicating deleted portions and all bold and underlined portions indicating additions:

CHAPTER XXX TREES

30-1 PRESERVATION OF CERTAIN TREES.

30-1.1 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.

For purposes of Section 30-1 **and Section 27-36**, a "tree" shall mean any woody perennial plant with a main stem or trunk exceeding three (3") inches in diameter measured **at a point four and one-half (4.5') feet above the ground on the downhill side of such tree.**

A "replacement tree" shall be of at least two (2") inches in diameter at four and one-half (4.5') feet above the ground.

(Ord. No. 494-2015 § 1; Ord. No. 515-2016)

30-1.2 **Significant Specimen Trees.** ~~Tree Registry~~

A Significant Specimen Tree shall include any tree with a diameter at breast height (DBH) larger than 16 inches or has a trunk diameter exceeding 60% of that of the largest similar tree listed in the West Cape May List of Approved Trees and Shrubs that is prepared and annually updated by the West Cape May Shade Tree Commission.

~~There is hereby established in the Borough of West Cape May a list of Significant Specimen Trees, 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 Significant Specimen Trees shall be compiled and maintained by the West Cape May Shade Tree Commission, and shall be annually reviewed and approved by the Borough Commission.~~

~~(Ord. No. 494-2015 § 1; Ord. No. 515-2016)~~

30-1.3 Tree Specialist.

The Borough Commissioners shall appoint a Tree Specialist. This individual shall be responsible for the inspection of sites for which application(s) are filed under this chapter.

A Tree Specialist is either of the following:

- a. A forester who shall have a bachelor's degree in forestry or arboriculture from a college or university, shall be certified as a certified tree expert by the State of New Jersey.
- b. A conservation officer who shall be certified as a certified tree expert by the State of New Jersey.

(Ord. No. 515-2016)

30-1.4 Applicability of Regulations.

~~The restrictions in this section shall apply to the removal of all trees **as defined in 30-1.1 that grow on any land in the Borough**, or species of tree, **Significant Specimen Trees** 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 this section, or 2) are otherwise regulated as part of the Borough's site plan, subdivision or zoning regulations, as set forth in subsection 30-1.6 below. Trees blown over and damaged beyond repair as approved by the Shade Tree Commission may be removed immediately without permit.~~

In the case of an emergency where, for example, trees are blown over, damaged beyond repair, or in such a condition that risks damage to person or property, a tree may be removed immediately. Within five business days following an emergency requiring removal of a tree, the property owner must submit an application pursuant to Section 30-1.5. The applicant shall provide evidence demonstrating the need for the emergency removal and comply with any replacement obligations as determined by the Shade Tree Commission pursuant to 30-1.6. Such evidence shall include but not be limited to, photographs.

30-1.5 Permit; Application; Procedure; Fee.

- a. 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.
- b. All applications for tree removal shall be filed with the Zoning Officer of the Borough of West Cape May. The applicant shall file an application for a tree removal permit on forms made available in the office of the Borough Clerk. When the application is filed, the applicant shall pay a fee of \$35. for each tree to be removed.
- c. The application shall be forwarded to the Tree Specialist who shall assess and provide a report to the Shade Tree Commission within two (2) weeks of receiving the application. Once the Tree Specialist report is received, the application should be placed on the next Shade Tree Commission Meeting Agenda.

- d. Tree removal permits shall be reviewed, approved or denied, and a decision shall be issued by the Shade Tree Commission Office to the owner or his authorized contractor, within three (3) days of the Shade Tree Commission meeting where the application was reviewed. 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.
- e. 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 30-1.5 below.
- f. Applicant shall notify the Zoning Office within three (3) days of a tree being removed for final inspection by the Zoning Officer.

(Ord. No. 494-2015 § 1; Ord. No. 515-2016)

30-1.6 Grant or Denial of Permit; Standards.

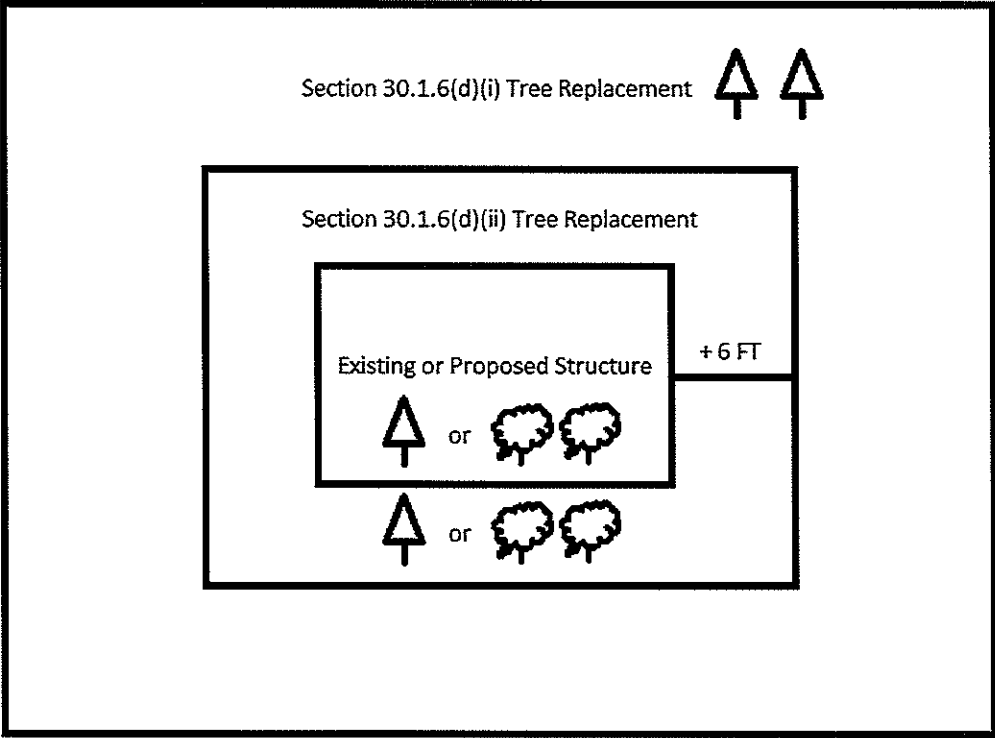
The Shade Tree Commission shall grant or deny the permit with reference to the standards contained in this subsection. In applying such standards, the Commission may condition the grant of the permit upon such reasonable conditions as may be deemed necessary to effectuate the purpose of this section.

- a. 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.
- b. 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.
- c. 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.
- d. Should the Commission authorize the removal of any tree, it shall require the applicant to provide a replacement tree, or trees, of a size and type, and at a location, that the Commission shall determine **in accordance with the following:**

- (i) **All existing trees outside a building footprint having a three (3") inch diameter trunk measured at a point four and one-half (4.5') feet above the ground on the downhill side of such tree, shall remain if said trees are in excess of six (6') feet from the outside of the exterior wall of the proposed structure. In the event that an applicant wishes to remove a tree or trees as above described, that applicant shall then be required to plant two (2) trees for each tree removed, which replacement trees shall be of at least two (2") inches in diameter at a point four and one-half (4.5') feet above the ground at a location on the property to be chosen by applicant.**
- (ii) **In addition to the replacement of removed trees above described, the applicant shall replace at a location of his or her choice on the property, any trees located within the footprint of the proposed structure, plus six (6') feet, if said trees have a trunk at least three (3") inches in diameter measured at a point four and one-half (4.5') feet above the ground on the**

downhill side of such tree. For every tree removed within the footprint of the existing or proposed structure, plus six (6') feet, the applicant shall plant one (1) tree along the side yard and rear yard which tree shall be of the same size as the replacement tree above described. The applicant shall be permitted to plant two (2) bushes in lieu of a tree if said bushes are a minimum of two (2') feet in diameter and are classified by the West Cape May List of Approved Trees and Shrubs. This requirement is to make up for the replacement of shrubs and is in addition to trees from outside the building envelope. However, the applicant shall not be required to plant trees closer than ten (10') feet between the two (2), said distances measured from center trunk to center trunk. The replacement trees need not be of the same species as the trees removed, however, they shall be of the same height classifications as the trees removed.

(iii) The location the tree to be removed determines the replacement obligation. All replacement trees or bushes may be installed in a location determined by the applicant in accordance with this section. The example graphic below depicts the areas subject to d(i) and d(ii) above:



e. The Commission may permit an exemption from the replacement requirements of this section upon a showing of extraordinary circumstances or undue hardship. An example of a circumstance that may qualify for an exemption pursuant to this section includes but is not limited to instances where an applicant demonstrates the property is in excess of the vegetation coverage requirements in Section 27-36.

30-1.7 Exception to Regulations.

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. (Ord. No. 494-2015 § 1; Ord. No. 515-2016)

30-1.8 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. (Ord. No. 494-2015 § 1; Ord. No. 515-2016)

30-1.9 Violations.

It shall be a violation of this section, punishable under Section 30-2, for any person, corporation or entity to remove a tree in order to avoid the provisions of this section. (Ord. No. 494-2015 § 1; Ord. No. 515-2016)

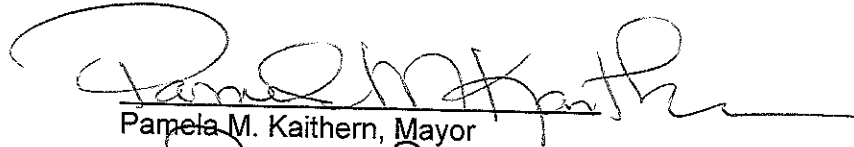
30-2 PENALTIES, ASSESSMENTS AND COSTS, ENFORCEMENT.

- 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 Chapter, and the remedies of compelling replacement of a tree or trees by paying money damages shall be considered cumulative.

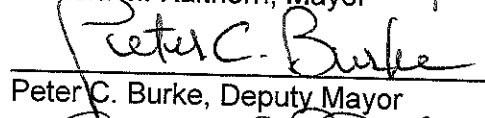
Section 2. Repealer. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of that conflict.

Section 3. Severability. Should any portion of this ordinance be declared unconstitutional or invalid, the remaining portion of this ordinance shall not be affected thereby and shall remain in full force and effect, and to that end the provisions of this ordinance are declared to be severable.

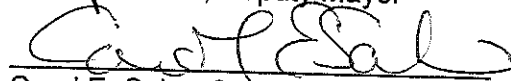
Section 4. Effective Date. This ordinance shall take effect 20 days after passage and publication, according to law.



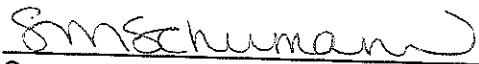
Pamela M. Kaithern, Mayor



Peter C. Burke, Deputy Mayor



Carol E. Sabo, Commissioner



Suzanne M. Schumann, RMC
Municipal Clerk

Introduced: November 29, 2017
Adopted: December 13, 2017

I hereby certify that the foregoing is a true copy of an Ordinance duly passed and adopted by a majority of full membership of the Board of Commissioners of the Borough of West Cape May, County of Cape May, New Jersey, at a meeting held on December 13, 2017.

Municipal Clerk

NOTICE OF PENDING ORDINANCE

The foregoing Ordinance was introduced at a Regular Meeting of the Board of Commissioners of the Borough of West Cape May held on November 29, 2017, when it was read for the first time and then ordered to be published according to law. This Ordinance will be further considered for final passage by the Board of Commissioners of the Borough of West Cape May at a meeting to be held at Borough Hall, 732 Broadway, West Cape May, New Jersey on December 13, 2017, at 7:00pm or as soon thereafter as possible, at which time and place, all persons interested will be given an opportunity to be heard concerning such ordinance.

Suzanne M. Schumann, RMC
Municipal Clerk

NOTICE OF FINAL ADOPTION

The above captioned Ordinance was passed on Second Reading, Public Hearing and Final Adoption by the Board of Commissioners of the Borough of West Cape May, in the County of Cape May, State of New Jersey, at a Regular Meeting of the Board of Commissioners held on December 13, 2017.

Suzanne M. Schumann, RMC
Municipal Clerk