

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

ORDINANCE NO. 515-16

**AN ORDINANCE AMENDING SECTIONS 30-1 and 30-2 OF THE BOROUGH CODE
CONCERNING THE APPLICATION FOR REMOVAL OF TREES AND SHRUBS
ON PUBLIC AND PRIVATE PROPERTY IN THE BOROUGH OF WEST CAPE MAY**

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 clarify and revise regulations governing the tree removal application process;

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

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. (Ord. No. 494-2015 § 1)

For purposes of Section 30, 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 level on the downhill side of such tree.

30-1.2 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.

(Ord. No. 494-2015 § 1)

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:

- (1) 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.
- (2) A conservation officer who shall be certified as a certified tree expert by the State of New Jersey.

30-1.4 Applicability of Regulations.

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 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. (Ord. No. 494-2015 § 1)

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 he files the application, 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)

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.

(Ord. No. 494-2015 § 1)

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)

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)

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)

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.

Pamela M. Kaithern, Mayor

Peter. C. Burke, Deputy Mayor

Carol E. Sabo, Commissioner

Suzanne M. Stocker, RMC
Municipal Clerk

Introduced: December 14, 2016
Adopted: December 28, 2016

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 December 14, 2016 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 28, 2016 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.

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 28, 2016.

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 28, 2016.

Municipal Clerk