

City of Somers Point

Ordinance

No. 12 of 2024

AN ORDINANCE AMENDING CHAPTER 242 – TREES AND SHRUBS, BY DELETING CURRENT ARTICLES I – PROTECTION, AND II – VISABILITY AT INTERSECTIONS, AND REPLACING SAME WITH ARTICLE I – TREE REMOVAL AND REPLACEMENT, AND ARTICLE II – MAINTENANCE REQUIREMENTS

WHEREAS, from time to time, the City of Somers Point (“City”) receives mandatory directives from the New Jersey Department of Environmental Protection (“DEP”); and

WHEREAS, the DEP has issued a mandatory directive for municipalities relative to the enactment of an ordinance relative to tree removal and replacement; and

WHEREAS, the City hereby wishes to come in compliance with such directive; and

WHEREAS, the City’s Code currently maintains a chapter on Trees and Shrubs which was enacted in 1925 and amended in 1970; and

WHEREAS, this chapter, in addition to containing certain outdated provisions of law, makes reference to a City Shade Tree Commission, which the City no longer maintains; and

WHEREAS, City Council for the City believes that it is appropriate to amend the chapter on Trees and Shrubs to bring it up to date with the current Code, as well as incorporate the provisions of the DEP’s mandatory ordinance on tree removal and replacement.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Somers Point, County of Atlantic, and State of New Jersey as follows:

SECTION 1. Article I – Protection, and Article II – Visibility at Intersection, of Chapter 242 – Trees and Shrubs, are hereby repealed in their entirety;

SECTION 2. A new Article I of Chapter 242-Trees and Shrubs, entitled “Tree Removal and Replacement,” with the following sections is hereby enacted:

§242-1. Purpose

In recognition that trees contribute significantly to the character of Somers Point aesthetically, promote the environmental integrity of the community by providing natural habitats, moderating temperatures, filtering stormwater, and reducing erosion, as well as protect and preserve the environment and promote public health, safety and welfare, the purpose of this Article is to establish requirements for tree removal and replacement within the City.

§242-2. Definitions

City of Somers Point **Ordinance**

For purposes of Chapter 242 of the Code, 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" Diameter at Breast Height (DBH) would have a CRR = 6"x1.5' = 9.0'.
- 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.
 - 1. Has an infectious disease or insect infestation;
 - 2. Is dead or dying; If this determination is not easily observable, a report documenting the specimen's condition by a certified arborist or a Licensed Tree Expert (LTE) should be submitted by the Applicant to support this claim.
 - 3. Obstructs the view of traffic signs or the free passage of pedestrians, bicycles or vehicles, where pruning attempts have not been effective;
 - 4. Is causing obvious damage to structures (such as building foundations, sidewalks, etc.); or
 - 5. Is determined to be a threat to public health, safety, and/or welfare by a certified arborist or Licensed Tree Expert (LTE).
- E. "Owner" means any person or group of persons, firm, corporation or officer thereof, partnership, limited liability company, association or trust who owns, operates, exercises control over, or is in charge of a property. The ownership records of the County of Atlantic Clerk's office used for property tax purposes shall be conclusive evidence of the ownership of property regulated pursuant to this article.

City of Somers Point **Ordinance**

- F. "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.
- G. "Resident" means an individual who resides on the residential property where a tree regulated by this ordinance is removed or proposed to be removed.
- H. "Shrub" means a woody plant which is smaller than a tree which has several main stems arising at or near the ground. This term also includes what is commonly referred to as bushes and/or hedges.
- I. "Street Tree" means a tree planted in the sidewalk, planting strip, and/or in the public right-of-way adjacent to 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, etc.
- J. "Tree" means a woody perennial plant, typically having a single stem or trunk having a minimum DBH of 6" growing to a considerable height and bearing lateral branches at some distance from the ground.
- K. "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.
- L. "Tree removal" means to kill or to 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.

§242-3. Regulated Activities

A. Application Process:

- 1. Any owner or resident, or a contractor acting on their, or their agent's behalf, planning to engage in the removal of a street tree, with DBH of 2.5" or more shall submit a construction application permit. No tree shall be removed until the application has been reviewed and approved by either the City's Construction or Zoning Official, or Code Enforcement Officer.

City of Somers Point **Ordinance**

2. Any owner, resident or developer, or a contractor acting on their, or their agent's behalf, seeking approval from either the City's Planning Board or Zoning Board of Adjustment for purposes of seeking to enhance, develop or redevelop property or properties involving tree removal, as that term is defined herein, unless otherwise exempt under Section 242-4, shall complete and submit with the application the following:
 - (a) An inventory as to the type, size (DBH) and location of trees proposed for removal that exceed 2.5" DBH within the public right-of-way and 6" DBH outside the public right-of-way is to be provided.
 - (b) In addition, a report accompanied by a plan is to be provided clearly detailing how the trees and street trees, as defined herein, are to be replaced.

B. Tree Replacement Requirements:

1. Any owner, resident, developer, contractor, or agent of same, who engages in a tree removal one or more street tree(s) with a DBH of 2.5" or more, unless exempt under Section §242-4, shall be subject to the requirements of the Tree Replacement Requirements Table.
2. Any person or entity, other than the owner of the property or contractor authorized by the owner, who removes one or more tree(s), with a DBH of 6" or more, unless otherwise exempt under Section §242-4, shall be subject to the requirements of the Tree Replacement Requirements Table below.
3. The species type and diversity of replacement trees shall be in accordance with the list provided in Appendix A.

C. Replacement tree(s) shall:

1. Be replaced in kind with a tree that has an equal or greater DBH than tree removed or meet the Tree Replacement Criteria in the table below;
2. Be planted within twelve (12) months of the date of removal of the original tree(s) or at an alternative date specified by the municipality;
3. 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
4. Shall not be planted in temporary containers or pots, as these do not count towards tree replacement requirements.

City of Somers Point Ordinance

Tree Replacement Requirements Table:

Category	Tree Removed (DBH)	Tree Replacement Criteria (See Appendix A)
1	DBH of 2.5" (for street trees) or 6" (for non-street trees) to 12.99"	Replant 1 tree with a minimum tree caliper of 2.0" for each tree removed
2	DBH of 13" to 22.99"	Replant 2 trees with minimum tree calipers of 2.0" for each tree removed
3	DBH of 23" to 32.99"	Replant 3 trees with minimum tree calipers of 2.0" for each tree removed
4	DBH of 33" or greater	Replant 4 trees with minimum tree calipers of 2.0" for each tree removed

D. Replacement Alternatives:

1. If the reviewing board and/or zoning or construction official, or code enforcement officer determines that some or all required replacement trees cannot be planted on the property where the tree removal activity occurred, then the applicant shall do one of the following:
 - (a) Plant replacement trees in a separate area(s) approved by City Council for such purposes, or;
 - (b) Pay a fee in the amount of \$500 per replacement tree. The fee shall be placed by the City into a fund strictly dedicated to tree planting and continued maintenance of the trees planted on public lands throughout the City.

§242-4. Exemptions

All persons shall comply with the tree replacement standard outlined above, except in the cases detailed below. Proper justification, such as recent photographs and/or a report from a certified arborist or licensed tree expert, shall be provided, to the City by all persons claiming an exemption.

- A. Residents removing non street trees on a single residential property that fall into Category 1 and 2 of the Tree Replacement Requirements Table; however, street trees and non-street trees in Categories 3 and 4 being removed are to be replaced in accordance with the Replacement Table;
- B. Tree farms in active operation, nurseries, fruit orchards, and garden centers;

City of Somers Point **Ordinance**

- C. Properties used for the practice of silviculture under an approved forest stewardship or woodland management plan that is active and on file with the municipality;
- D. Any trees removed as part of a municipal or state decommissioning plan. This exemption only includes trees planted as part of the construction and predetermined to be removed in the decommissioning plan.
- E. 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;
- F. Approved game management practices, as recommended by the State of New Jersey Department of Environmental Protection, Division of Fish, Game and Wildlife;
- G. Hazard trees, unless designated as street trees, may be removed with no replacement. Street tree(s) meeting the definition of hazard trees must be replaced in accordance with §242-3, unless the construction official determines that the replacement tree(s) will cause a threat to public health, safety, and/or welfare of the public.
- H. Tree removal and replacement activities conducted at a golf course as part of normal course operation and maintenance activities.

§242-5. Enforcement

The provisions of this Article shall be enforced by either the City Engineer, City Construction or Zoning Official, Code Enforcement Officer and/or City Construction/Zoning Officials during the course of standard construction review and enforcement duties.

§242-6. Violations and Penalties

Any person(s) who is found to be in violation of the provisions of this Article shall be subject to a fine not exceeding \$1,000, or to imprisonment for a term not exceeding 90 days, or to a period of community service not exceeding 90 days, or any combination of the foregoing. The improper removal of each tree or street tree shall count as a separate offense.

APPENDIX "A"

APPROVED LIST OF REPLACEMENT TREE SPECIES AND PLANTING STANDARDS FOR THE CITY OF SOMERS POINT

Proposed canopy and understory tree species proposed for replacement plantings on development and redevelopment sites in the City should be selected based on site conditions and their proposed function.

City of Somers Point **Ordinance**

Perimeter buffer plantings on commercial sites especially in locations adjacent to existing residential uses should prioritize native evergreen species capable of providing an effective long term screen once mature. Street tree and ornamental canopy plantings should emphasize species adapted to Coastal plain soils and climatic conditions, and also selected to minimize conflicts with existing/proposed overhead and/or subgrade utilities.

Non-irrigated canopy species should initially incorporate slow release tree watering irrigation system to aid in successful establishment and incorporate mulching with organic and/or aggregate materials.

Specific species should be healthy, nursery-grown stock of required diameter breast height (dbh) and overall size at planting consistent with the latest edition of the American Standard for Nursery Stock published by the American Nursery and Landscape Association. Planting varieties should create diversity of species in order to minimize disease and insect damage. All invasive species noted by the New Jersey Native Plant Society should be avoided.

Evergreens primarily for use in screening and ornamental applications can include the following species that need to be actively maintained through trimming and/or shearing:

- Eastern Red Cedar (*Juniperus virginiana*)
- American Holly (*Ilex opaca*)
- Eastern White Pine (*Pinus strobes*)
- Virginia Pine (*Pinus virginiana*)
- Leyland Cypress (*Cupressus X Leylandii*)

Deciduous Street Trees – should emphasize varieties such as the following native species:

Scientific Name

Common Name

<i>Quercus palustris</i>	Pin Oak
<i>Quercus alba</i>	White Oak
<i>Quercus rubra</i>	Northern Red Oak
<i>Ulmus americana</i>	American Elm
<i>Tilia americana</i>	American Linden/Basswood
<i>Platanus americana</i>	American Sycamore
<i>Quercus prinus</i>	Chestnut Oak
<i>Nyssa sylvatica</i>	Black Gum
<i>Liriodendron tulipifera</i>	Tulip Tree
<i>Acer rubrum</i>	Red Maple

City of Somers Point Ordinance

*Referenced from Street Trees for New Jersey-Outside the Pine Barrens

Commercial/Residential Replanting Applications

Deciduous and/or evergreen species proposed for replanting should be based on suitability for existing site conditions and, if possible, selected from the list provided for the Native Plant Society of New Jersey for Atlantic County.

All replacement plantings are to be warranted by the Applicant/Owner, and are subject to replanting if a specimen becomes diseased and dies within two (2) years of the original planting date.

SECTION 3. A new Article II of Chapter 242-Trees and Shrubs, entitled "Maintenance Requirements," with the following sections is hereby enacted:

§242-6. Duties of Owners and Residents

The owners and residents of property within the City of Somers Point are required to:

- A. Keep all shrubs, brush, hedges, and other plant life growing within 10 feet of any roadway and within 25 feet of the intersection of two roadways cut to a height of not more than 2 1/2 feet where it shall be necessary and expedient for the preservation of the public safety.
- B. Ensure that all trees, street trees, shrubs, brush, hedges, or other plant life either in the planting strip or right of way alongside their property, or located on their property, are maintained so as to not intrude upon, obstruct or restrict the use of any public sidewalk or roadway.

§ 242-7. Notice to comply.

Any owner or resident in violation of §242-6, shall, upon 10 days' notice provided by the Construction or Zoning Official, Code Enforcement Officer, or any police officer, provide for the trimming or cutting of the such trees, street trees, shrubs, brush, hedges and/or plant life so as remove the offensive growth.

§ 242-8. Failure to comply.

If said owner or resident shall refuse or neglect to trim or cut the aforementioned trees, street trees, shrubs, brush, hedges and/or other plant life in the manner and within the time provided in § 242-7 above, then any of the City Officials set forth in said section may file a complaint in the Municipal Court of the City of Somers Point against the owner and/or resident for violation of this Article. In addition, the City, by and through its Public Works Department

**City of Somers Point
Ordinance**

may undertake such action as necessary to ensure that the offensive growth is either trimmed, cut or removed.

§ 242-9. Performance of work by city.

Where trees, street trees, shrubs, brush, hedges and/or other plant life are cut from any lands within the City of Somers Point, under § 242-8 hereof, the Head of Public Works shall certify the cost thereof to the City Administrator, which shall examine the certificate and, if found correct, shall cause the cost as shown thereon to be charged against said property. The amount so charged shall forthwith become a lien upon such lands and shall be added to and become and form part of the taxes next to be assessed and levied upon such property, the same to bear interest at the same rate as other taxes and shall be collected and enforced by the same officers and in the same manner as taxes.

§ 242-10. Violations and penalties.

Anyone found guilty of violating this Article shall be subject to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 90 days or to a period of community service not exceeding 90 days, or any combination of the foregoing.

SECTION 4: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

SECTION 5: Should any section, clause, sentence, phrase or provision or any item in any schedule of this ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this ordinance.

SECTION 6: This Ordinance shall take effect upon its final passage, publication and adoption in the manner prescribed by law.

First Reading:	April 25, 2024
Publication:	May 1, 2024
Final Passage:	May 9, 2024
Publication:	May 15, 2024

The within Ordinance was introduced at a meeting of the Common Council of the City of Somers Point, County of Atlantic and State of New Jersey held on April 25, 2024, and will be further considered for final passage after a public hearing thereon at a meeting of said Common Council on May 9, 2024.

05/20/2024
Date


Dennis Tapp, Mayor

