

1 consumption.

2 ~~"Food establishment" shall mean any permanent or temporary public or private place~~
3 ~~within the Town at which food or drink, other than live shellfish, raw vegetables or fruit,~~
4 ~~in processed, prepared, packaged, mixed, cooked, served, sold in an unpackaged~~
5 ~~condition, or offered for direct or ultimate distribution to and consumption by the public,~~
6 ~~including butcher shops or departments, home bakeries, restaurants, dining rooms, lunch~~
7 ~~rooms or counters, soda fountains, diners, boarding house food services, catering~~
8 ~~services, nursing or rest home food services, church, school, or other municipal kitchens,~~
9 ~~cafeteria and facilities, and all areas and facilities used in conjunction therewith.~~

10
11 (b) "Food establishment" shall mean any permanent or temporary public or private place
12 within the Town at which food or drink, other than live shellfish, raw vegetables or fruit,
13 in is processed, prepared, packaged, mixed, cooked, served, sold in an unpackaged
14 condition, or offered for direct or ultimate distribution to and consumption by the public,
15 including butcher shops or departments, home bakeries, restaurants, dining rooms, lunch
16 rooms or counters, soda fountains, diners, boarding house food services, catering
17 services, nursing or rest home food services, church, school, or other municipal kitchens,
18 cafeteria and facilities, and all areas and facilities used in conjunction therewith.

19
20 (c) ~~"FThe term "food handler" shall mean any person who is employed in a food~~
21 ~~establishment or who handles food during storage, manufacture, preparation, handling,~~
22 ~~sale or serving in such a manner that some portion of his clothes or body may come in~~
23 ~~contact with such food or with utensils used in connection therewith. The term "utensils"~~
24 ~~shall include all kitchenware, tableware, glassware, cutlery, containers, and other kinds of~~
25 ~~utensils and equipment with which food comes in~~
26 ~~contact during preparation, processing, storage, handling or sale.~~

27
28 (d) "Food packager" shall mean any person located within the Town who places meat,
29 eggs, bakery products, or other food in packaging materials for the purpose of retail sale
30 of those products. ~~The term "Health Officer" shall mean the Town health officer, or his~~
31 ~~duly~~
32 ~~authorized representative.~~

33
34 (e) ~~The term "Health Officer" shall mean the Town health officer, or his/her duly~~
35 ~~authorized representative. The term "food handler" shall mean any person who is~~
36 ~~employed in a food~~
37 ~~establishment or who handles food during storage, manufacture, preparation, handling,~~
38 ~~sale or serving in such a manner that some portion of his clothes or body may come in~~
39 ~~contact with such food or with utensils used in connection therewith.~~

40
41 (f) "Perishable food" is food that is not preserved in a manner so as to prevent the quality
42 of the food from being adversely affected if held longer than 7 days under normal
43 shipping and storage conditions.

44
45 (g) ~~The term "Person" shall mean persona human being as well as; a firm, a corporation,~~
46 ~~or an association.-~~

1
2 (hg) "Polystyrene foam" shall mean blown polystyrene and expanded and extruded foams
3 (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form
4 of polystyrene foam insulation) that are thermoplastic petrochemical materials utilizing a
5 styrene monomer and processed by any number of techniques including, but not limited
6 to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam
7 molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is
8 generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and
9 egg cartons. For the purposes of this ordinance, the term "polystyrene" shall not include
10 clear polystyrene known as "oriented polystyrene."~~The term "temporary food service~~

11 ~~establishment" shall be any food service~~
12 ~~establishment which operates for a temporary period of time, not to exceed two (2)~~
13 ~~weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory~~
14 ~~gathering.~~

15
16 (i) "Prepared food" shall mean food or beverages which are served at the food vendor's
17 location having been previously prepared elsewhere, or are prepared at the vendor's
18 location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared
19 food does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or
20 off premises.

21
22 (j) "Retail vendor" shall mean any person, restaurant, store, shop, sales outlet or other
23 establishment including, without limitation, a grocery store, convenience store or
24 delicatessen, located within the Town that offers prepared food for retail sale.

25
26 (k) ~~T~~The term "temporary food service establishment" shall be any food service
27 establishment which operates for a temporary period of time, not to exceed two (2)
28 weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory
29 gathering.

30
31 (l) ~~U~~The term "utensils" shall include all kitchenware, tableware, glassware, cutlery,
32 containers, and other kinds of utensils and equipment with which food comes in
33 contact during preparation, processing, storage, handling or sale.

34
35
36 **Sec. 11-1-3. Permit Required.** No person, firm, or corporation shall engage in the
37 business of conducting a food establishment in the Town of Cape Elizabeth without first
38 obtaining a permit therefor issued upon application to the health officer and upon his
39 approval of plans for such establishment, the character and qualifications of the applicant
40 and inspection of the location of said establishment. The fee for permanent, temporary or
41 seasonal food service establishments shall be as determined by the Town Council from
42 time to time. The permit shall be posted in a conspicuous place at the establishment for
43 which issued, visible to the public on an inside wall; the permits is the property of the
44 Town and shall at all times be kept in a clean condition, protected against mutilation, soil
45 or damage. Each permit shall be for the person and location specified therein and shall
46 not be transferable to any other person or location. Upon the transfer of a food service

1 establishment, the transferee shall submit new application to the health officer and shall
2 not commence operations until a new permit is issued therefor.

3
4 **Sec. 11-1-4. Application for Permit.** Application forms shall be furnished by the
5 health officer upon which shall be supplied the following information.

6
7 (a) The name of the person, firm or corporation.

8 (b) The residence of such applicant or of each of the individual members of
9 such firm and its principal place of business.

10 (c) The kind of food establishment and the nature of the undertaking to be
11 performed or carried on.

12 (d) The street address, if any, where such food establishment is to be located.

13 (e) New applicants shall be of reputable character regarding which two
14 references shall be provided and such character shall be established to the satisfaction of
15 the health officer.

16 (f) Any other relevant information required by the health officer in respect to
17 the undertaking proposed to be conducted, the facilities and equipment of the
18 establishment and the qualification of the applicant.

19
20 **Sec. 11-1-5. Requirements for Establishments.** The following basic requirements shall
21 apply to all food establishments, provided that the health officer may establish from time
22 to time rules and regulations which amplify and augment these requirements with respect
23 to sanitation, cleanliness and adequacy of facilities, equipment and structure for particular
24 types of food establishments:

25
26 (a) Floors. Floors shall be of such construction as to be easily cleaned, equipped
27 with proper drainage when necessary, and shall be kept clean and in good repair.

28
29 (b) Walls and Ceilings. Walls and ceilings shall be kept clean and in good repair.
30 All walls and ceilings of areas in which food is stored shall have a smooth, washable,
31 light-colored surface and shall be maintained in a clean and sanitary condition.

32
33 (c) Doors and Windows. When flies are prevalent, all openings into the outer air
34 shall be effectively screened, and doors shall be self-closing, unless other effective means
35 are provided to prevent the entrance of flies. The presence of flies or flying insects within
36 the structure shall be presumptive evidence of failure to comply with this section.

37
38 (d) Lighting. In all areas in which food is prepared, stored, handled, served, or
39 sold, and in all areas in which food utensils are washed, rinsed or dried, lighting shall be
40 adequate for working purposes and for effective and thorough cleaning.

- 41
42 1. The source of light (bulb, tube, or others) in any area shall be protected by
43 fixtures which will prevent any contamination of food should the source of
44 light shatter.

1 2. Adequate lighting for preparation and handling of food and for cleaning
2 utensils shall consist of an intensity of not less than 20 foot candles of
3 light as measured by an appropriate device. (While light intensity is
4 dependent on several factors including wattage, reflectors, distance, etc.,
5 Generally a double 4-foot tube per 64 sq. ft. is deemed adequate.
6

7 (e) Ventilation. All areas in which food is prepared, stored, handled, served or
8 sold, or in which utensils are washed shall be well ventilated.
9

10 (f) Toilet Facilities. Toilet and lavatory facilities for employees shall be provided
11 on the premises. Food establishments with a seating capacity of 30 or more shall provide
12 separate lavatories and toilets for males and females conveniently located for patrons. All
13 lavatories and toilet rooms shall be kept in a clean condition, in good repair, well lighted,
14 and with self-closing doors. Toilet facilities shall not open directly into any room in
15 which food is being prepared, stored, handled, served or processed, or in which utensils
16 are being washed.
17

18 (g) Water Supply. Running water under pressure shall be readily accessible to all
19 areas in which food is prepared or utensils washed. The water supply shall be adequate
20 and of a safe, sanitary quality approved by the health officer.
21

22 (h) Lavatory Facilities. Adequate and convenient hand washing facilities shall be
23 provided, including hot and cold running water, soap and approved sanitary tissues or air
24 drier. The use of a common towel is prohibited. No employee shall resume work after
25 using the toilet without first washing hands. Soiled linens, aprons, etc., used in
26 preparation, storage, service of food, shall be kept in separate, closed, ventilated
27 containers.
28

29 (i) Utensils. All multi-use utensils and all show and display cases or windows,
30 work surface, counters, shelves, refrigerating equipment, sinks, stoves, hood, and other
31 equipment or utensils used for the transportation, storage or display of food in connection
32 with the operation of any food establishment shall be so constructed as to be easily
33 cleaned and shall be kept clean and in good repair. Utensils containing or plated with
34 cadmium or lead or other poisonous substances shall not be used, except that lead solder
35 may be used for jointing. Approved single-service utensils may be substituted for
36 multiuse utensils; provided that such single-service utensils shall be used only once.
37

38 (j) Cleaning and bactericidal treatment of utensils. Utensils and all show and
39 display cases or windows, work services, counters, shelves, tables, refrigerating
40 equipment, stoves, sinks, hoods and other equipment for the transportation of food used
41 in connection with the operation of any food establishment shall be kept clean and free
42 from chips, cracks, open seams, insects, and other contaminating material; furthermore
43 they shall be disinfected in such a manner as to be free from bacilli of the coliform group
44 and to have a total bacteria count of not more than 100 per utensil as determined by test
45 in a laboratory approved for the purpose. All cloths used shall be clean and sanitary.
46 Utensils used in the preparation, storage handling or sale of food shall be thoroughly

1 cleansed and effectively subject to an approved bactericidal process immediately
2 following the day's operation or more frequently if necessary. An adequate supply of hot
3 running water, maintained at not less than 180° temperature and 15 pounds per inch
4 pressure shall be provided for the purpose of cleansing and disinfection. Drying cloths if
5 used shall be clean and sanitary and used for no other purposes. No article, polish, or
6 other substance containing any poisonous material shall be used for cleaning or polishing
7 any utensils or equipment. No substance containing any poisonous material shall be kept
8 or used as an insecticide or exterminator in any place where food is exposed during sale,
9 preparation, holding or dispensing or in such manner as to contaminate such food.

10
11 (k) Storage and handling of equipment. After bactericidal treatment, utensils
12 shall be stored in a clean, dry place, protected from dust or other contamination and shall
13 be handled in such manner as to prevent contamination. Single-service utensils shall be
14 purchased only in sanitary containers and stored in a clean, dry place until used, and shall
15 be handled in a sanitary manner.

16
17 (l) Disposal of Wastes. Pending ultimate removal, all garbage, trash and other
18 waste shall be kept in suitable receptacles and disposed of in an approved manner, in
19 accordance with the Housing Code.

20
21 (m) Refrigeration. All readily perishable food shall be kept properly refrigerated
22 at all times except when being processed, prepared or served.

23
24 (n) Wholesomeness of Food. All Food shall be clean, wholesome, free from
25 spoilage and so prepared as to be safe for human consumption. All food shall be from
26 approved sources.

27
28 (o) Preparation, storage, handling and sale of food. All food shall be prepared,
29 stored, handled, displayed or sold in such manner as to be protected from dust, fumes,
30 toxic substances, flies, vermin, depredation, and pollution by rodents, droplet infection,
31 overhead leakage, or other contamination. No live animals, or live fowl, except those
32 which are themselves intended for food, shall be kept or allowed in any food
33 establishment and such animals or poultry intended for slaughter shall be cared for in
34 areas entirely and completely segregated from any room where food is processed, stored
35 or prepared. All approved means necessary for the elimination of flies, roaches, other
36 vermin, and rodents shall be used (see Housing Code).

37
38 (p) Employees. No food handlers in any food establishment shall engage in any
39 practice which is unsanitary or which tends to be detrimental to the cleanliness and
40 sanitation of the food establishment or the health of the patrons thereof, all persons
41 working in food establishments shall keep clean and shall wear clean outer garments.
42 Head bands, caps or hair nets or head cover shall be worn by food handlers working over
43 unprotected food and shall be kept reasonably clean and shall be used for no other
44 purpose than for use during food handling. Special types of clothing as are deemed
45 essential by the health officer may be required.

46 No person who is affected with any disease in a communicable form or who is a

1 carrier of such disease or any person with open lesion or sores shall work in a food
2 establishment except upon authorization of the health officer. The use of tobacco in any
3 room where food is cooked or prepared is prohibited.

4
5 (q) Premises. The premises, both inside and out, of all food establishments shall
6 be kept clean and free of litter and refuse. Stoves, counter tops, tables, bare floors,
7 lavatories, and other frequently used solid surfaces shall be cleaned daily under the
8 supervision of the manager or owner. Soap and hot water of not less than 180 ° F. shall
9 be used for washing and there shall be a hot water rinse for all these surfaces.

10
11 (r) Polystyrene Foam. Polystyrene foam food containers shall be replaced with reusable,
12 compostable, or recyclable alternatives, as specified below:

- 13
14 i. No retail vendor in the Town shall serve or sell prepared food in
15 polystyrene foam containers and no food packager shall package meat,
16 eggs, bakery products, or other food in polystyrene foam containers.
17
18 ii. No retail vendor in the town that sells tangible personal property at retail
19 shall sell polystyrene foam food or beverage containers.
20
21 iii. The Town shall not use polystyrene foam food or beverage containers at
22 any Town facility or Town sponsored event.
23
24 iv. No Town department or facility shall purchase or acquire polystyrene
25 foam food or beverage containers.
26
27 v. All parties who contract with the Town shall be prohibited from using
28 polystyrene foam food and beverage containers in Town facilities or on
29 Town funded projects within the Town.
30
31 vi. Exemptions from a prohibition in using polystyrene foam food containers
32 shall apply to:
33
34 a. The sale and packaging of perishable food for shipment, which
35 may include live shellfish, or raw meat, raw vegetables or raw
36 fruits;
37
38 b. A retail vendor or food packager existing in the Town of Cape
39 Elizabeth prior to [effective date of this ordinance] that has
40 received an exemption from the Town Manager or his/her
41 designee. Prior to granting an exemption, the Town Manager or
42 his/her designee shall receive a written request for an exemption.
43 The written request shall state and the Town Manager or his/her
44 designee shall consider: (1) If polystyrene foam food containers
45 were used by the vendor or food packager prior to [effective date
46 of this ordinance]; and (2) If the use of polystyrene foam food

1 container alternatives will constitute an undue hardship. Undue
2 hardship includes, but is not limited to, situations unique to the
3 food vendor that are not generally applicable to other retail vendors
4 or food packagers in similar circumstances. The Town Manager or
5 his/her designee shall make a written decision on each exemption
6 request.

7
8 c. A federal, state or local government emergency when the
9 immediate preservation of public health, safety or welfare requires
10 the use of polystyrene foam.

11
12
13 **Sec. 11-1-20. Severability.** If any part or provision of this ordinance or the application
14 thereof to any person or circumstances is held invalid, the remainder of the ordinance,
15 including the application of such part or provision to other persons or circumstances,
16 shall not be affected thereby and shall continue in full force and effect. To this end,
17 provisions of this ordinance are severable.

18
19
20
21 **Article IV. Single Use Carryout Bags**

22 [Adopted eff. _____]

23		
24	<u>Sec. 11-4-1 Purpose</u>	<u>11-20</u>
25	<u>Sec. 11-4-2 Definitions</u>	<u>11-20</u>
26	<u>Sec. 11-4-3 Single Use Carryout Bag</u>	<u>11-21</u>
27	<u>Sec. 11-4-4 Exemptions</u>	<u>11-22</u>
28	<u>Sec. 11-4-5 Enforcement</u>	<u>11-22</u>
29	<u>Sec. 11-4-6 Severability</u>	<u>11-22</u>
30		

31 **Sec. 11-4-1. Purpose.** The purpose of this article is to reduce the distribution of single
32 use carryout bags by stores in the Town of Cape Elizabeth, and to encourage the use of
33 reusable bags by residents and visitors of the Town.

34
35 **Sec. 11-4-2. Definitions.** For the purpose of this Article, the following definitions shall
36 apply:

37
38 (a) **Single Use Carryout Bag** shall mean a bag other than a Reusable Bag provided at the
39 check stand, cash register, point of sale or other point of departure for the purpose of
40 transporting food or merchandise out of the establishment. The term Single Use Carryout
41 Bag includes compostable and biodegradable bags¹ but does not include Reusable Bags,
42 Produce Bags, Product Bags or bags provided by pharmacists to contain prescription
43 drugs.

44
45 ¹ Compostable and biodegradable bags are included in this list because they do not
46 naturally decompose and require processing in an industrial facility to biodegrade.

1
2 (b) Produce Bag or Product Bag shall mean any bag without handles used exclusively
3 to carry produce, meats, seafood, other food items or merchandise to the point of sale
4 inside a store or to prevent such items from coming into direct contact with other
5 purchased items.

6
7 (c) Reusable Bag shall mean a bag that:

- 8
9 _____
10 i. is designed and manufactured to withstand repeated uses over a period of
11 time;
12 ii. is machine washable or made from a material that can be cleaned and
13 disinfected regularly;
14 iii. is at least 2.25 millimeters thick if made from plastic;
15 iv. has a minimum lifetime of 75 uses; and
16 v. has the capability of carrying a minimum of 18 pounds.

17 (d) Store shall mean any of the following retail establishments located within the Town:

- 18
19 i. a full-line, self-service market located in a permanent building that sells at
20 retail a line of staple foodstuffs, meats, seafood, produce, household
21 supplies, dairy products or other perishable items;
22 ii. a drug store, pharmacy, supermarket, grocery store, convenience food store,
23 food mart, gift store, or other entity engaged in the retail sale of a limited line
24 of goods that includes milk, soda, and snack foods; or
25 iii. farm stand.

26
27 Store does not mean businesses at which foodstuffs are an incidental part of the business.
28 Food sales will be considered to be “incidental” if such sales comprise no more than two
29 percent (2%) of the business’ gross sales in the Town as measured by the dollar value of
30 food sales as a percentage of the dollar value of total sales at any single location.

31
32 [All green shaded text is shown for informational purposes and is not proposed for
33 adoption]

34
35 Sec. 11-4-3. Single Use Carryout Bag. The following provisions shall regulate the use
36 of Single Use Carryout Bags by a store.

37
38 (a) No Store shall provide a Single Use Carryout Bag to a customer at the check
39 stand, cash register, point of sale or other point of departure for the purpose of
40 transporting food or merchandise out of the establishment except as provided in this
41 section.

42
43 (b) A Store may make available for sale to a customer a Single Use Carryout Bag for
44 a minimum charge of five cents (\$0.05).

1 (c) All monies collected by a Store for Single Use Carryout Bags under this
2 ordinance may be used by the Store for any lawful purpose.

3
4 (d) All Stores must post signage clearly indicating the per bag charge for Single Use
5 Carryout Bags.

6
7 (e) No Store shall rebate or otherwise reimburse a customer any portion of the
8 minimum charge required in subsection (b).

9
10 **Sec. 11-4-4. Exemptions.** A Store is exempt from the provisions of this ordinance in a
11 federal, state or local government emergency when the immediate preservation of the
12 public health, safety or welfare requires the use of a Single Use Carryout Bag.

13
14 **Sec. 11-4-5. Enforcement.** The Town Manager or his/her designee(s) shall have the
15 primary responsibility for enforcement of this ordinance. If the Town Manager or his/her
16 designee(s) determine(s) that a violation of this ordinance has occurred, he/she shall issue
17 a written warning notice to the Store that a violation has occurred. A second violation
18 shall be subject to a fine not exceeding \$100. A third and/or subsequent violation shall be
19 subject to a fine not exceeding \$250 for each violation.

20
21 **Sec. 11-4-6. Severability.** If any part or provision of this ordinance or the application
22 thereof to any person or circumstances is held invalid, the remainder of the ordinance,
23 including the application of such part or provision to other persons or circumstances,
24 shall not be affected thereby and shall continue in full force and effect. To this end,
25 provisions of this ordinance are severable.

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