

CHAPTER 11

HEALTH and SANITATION

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[Adopted eff. 1/4/67 under R. S. 1964, T. 30, Sec. 2151; amended eff. 1/10/74, 11/12/76 and 1/8/86, amend eff.12/6/2017. Amended eff. 10/13/2022]

Article II. Solid Waste Disposal Ordinance

[Adopted eff. 9/18/68 under R.S. 1965, T. 30, Sec. 2151; repealed and replaced in its entirety eff. 6/21/78; Revised eff. 1/8/86; 11/11/94; 12/10/03; 07/08/2009 and 12/15/2012]

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Sec.11-2-1. Purpose.

The purpose of this ordinance is to protect the health, safety and general well-being of the citizens of the town; enhance and maintain the quality of the environment; conserve natural resources; prevent water and air pollution; gain management control over solid waste; and enable the reclamation of natural resources, including energy, from solid wastes by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste generated in the Town of Cape Elizabeth.

Sec. 11-2-2. Definitions.

For the purposes of this ordinance, the following words and phrases shall have the meanings ascribed to them in this section.

- (a) *Acceptable waste* shall mean ordinary household, municipal, institutional, commercial and industrial solid waste including, but not limited to, the following:
- (1) Garbage, trash, rubbish, paper and cardboard, plastics, refuse, beds, mattresses, sofas, and automobile or small vehicle tires, to the extent that **ecomaine** determines that the air emission criteria and standards applicable to and at the **ecomaine** disposal facility are not violated; and
 - (2) Processible portions of commercial and industrial solid waste; and
 - (3) Wood and lumber, tree limbs, branches, ties, logs and trees, if no more than four and one-half (4 1/2) feet long and twelve (12) inches in diameter; leaves; twigs; grass; and plant cuttings; and
 - (4) Residential recyclable materials and commercial recyclable materials.
- (b) *Commercial recyclable materials* means that portion of commercial solid waste which consists of recyclable materials.
- (c) *Commercial hauler* means any person or entity hauling or depositing material under this article for a fee.
- (d) *Commercial solid waste* means solid waste generated by a sole proprietorship, partnership, professional association, corporation or other business organization, provided that commercial solid waste shall not include residential solid waste, or solid waste generated by a municipal or quasi-municipal organization or by a state-approved school administration.
- (e) *Construction and demolition debris* shall mean solid waste consisting of one or more of the following materials resulting from construction, remodeling, repair, and demolition of structures:
- (1) Inert fill;
 - (2) Land clearing debris;
 - (3) Asphalt;
 - (4) Masonry;
 - (5) Wall board;
 - (6) Pipes; and

- (7) Metal conduits.
- (f) *Disposal* shall mean the discharge, deposit, dumping or placing of any solid waste into or on any land.
- (g) *ecomaine* shall mean **ecomaine**, a non-capital stock, non-profit corporation created pursuant to Title 30-A, Chapter 115 and Title 13-B, and Title 38, Section 1304-B(5) of the Maine Revised Statutes, or any successor thereto or assignee thereof.
- (h) *ecomaine disposal facility* shall mean any land or structure or combination of land area and structures, including waste to energy plants, landfills, transfer stations and recycling containers owned or operated by or under a contract with **ecomaine**, and/or any other site designated by **ecomaine** for storing, salvaging, reducing, incinerating, reclaiming or disposing of acceptable waste pursuant to the waste handling agreement and amendments thereto entered into between the Town of Cape Elizabeth and **ecomaine**.
- (i) *Hazardous waste* shall mean a waste substance or material in any physical state, designated as hazardous by the terms of the waste handling agreement between the Town of Cape Elizabeth and **ecomaine** and/or as defined by the Maine Department of Environmental Protection.
- (j) *Municipal disposal facility* shall mean any land or structure or combination of land area and structures owned or operated by, or under contract with the Town of Cape Elizabeth, including the Cape Elizabeth Recycling Center on Dennison Drive in Cape Elizabeth and the Riverside Land Reclamation Facility in Portland, Maine for disposal of acceptable waste.
- (k) *Person* shall mean any natural person, corporation, partnership, sole proprietorship, professional association or other legal entity.
- (l) *Public solid waste disposal facility* or *disposal facility* shall mean any land or structure or combination of land area and structures, including transfer stations, used for storing, salvaging, reducing, incinerating, reclaiming or disposing of solid wastes; this term shall include the **ecomaine** disposal facility and municipal disposal facility.
- (m) *Recyclable materials* shall mean solid waste which has useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes, including: leaf and yard wastes, wood wastes, newspapers; magazines; paperboard; paper products; cardboard; plastics; metal; foil; and glass.
- (n) *Residential recyclable materials* means that portion of residential solid waste which consists of recyclable materials.

- (o) *Residential solid waste* means household waste, residential refuse, or solid waste generated in a residence.
- (p) *Solid waste* shall mean useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials, junk, refuse, and inert fill material, but shall not include septage tank sludge nor agricultural or hazardous wastes; it shall include acceptable waste, unacceptable waste and construction and demolition debris as defined herein.
- (q) *Unacceptable waste* shall mean solid waste which is not acceptable waste and includes, but is not limited to, sewage and its derivatives, non-wood construction and demolition debris, products containing asbestos, asphalt, junk vehicles, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and hazardous waste, including hazardous chemicals.

Sec 11-2-3. Designation.

In accordance with the provisions of Title 38 M.R.S.A. §1304-B, the town hereby designates **ecomaine** disposal facilities, the Cape Elizabeth Recycling Center on Dennison Drive in Cape Elizabeth, Maine and the Riverside Land Reclamation Facility in Portland, Maine as its public solid waste disposal facilities for the purposes cited in this ordinance. The disposal by any person, including any person licensed as a waste hauler in accordance with this ordinance, of any acceptable waste, except commercial recyclable materials, generated within the municipality at any place other than at these designated facilities is prohibited; provided, however, the owner of any lot, or any other person with the permission of the lot owner, may dispose of inert substances such as earth, rocks, concrete or similar material at such lot for fill purposes only, subject to state or local land use regulations.

Sec 11-2-4. Governing body.

- (a) The town council shall establish any necessary rules and regulations governing the availability and use of its public solid waste disposal facilities on Dennison Drive and for its recycling program.
- (b) The operation of the municipal disposal facilities shall conform to all pertinent regulations or directives of all local, county, state or federal agencies which may have jurisdiction.

Sec. 11-2-5. Restrictions.

- (a) No person shall permanently dispose of solid waste of any kind upon any land within the corporate limits of the town unless such land has been designated by the Town as a public solid waste disposal facility.

- (b) Certain materials may be excluded by regulation from that solid waste which may be deposited at a public solid waste disposal facility. These excluded materials may include junk automobile bodies and similar bulky waste which may require special processing prior to any disposal; burning materials or materials containing hot or live coals; hazardous wastes; and other materials which the town deems necessary to exclude. Hazardous wastes shall be handled in accordance with 38 M.R.S.A. § 1319-0.
- (c) Except for licensed disposal of hazardous or infectious wastes, it shall be unlawful for any person to burn or incinerate any solid waste within the Town other than leaves or brush with a proper permit.

Sec 11-2-6. Authorized disposal facility users.

- (a) The availability and use of municipal disposal facilities shall be limited to residents of the Town and to those residents of any other municipality which may, by mutual agreement, be authorized to use the designated municipal disposal facilities. Non-resident Cape Elizabeth property owners and their agents may dispose of materials generated within Cape Elizabeth in accordance with procedures established by the Director of Public Works.
- (b) As a means of user control, the attendant of the municipal disposal facilities or an approved agent of the town shall:
 - (1) Authenticate a user's right to use the facility;
 - (2) Affix permit stickers only onto vehicles registered in the Municipality.
- (c) Any vehicle equipped with mechanized compaction equipment carrying items destined for the compactor unit shall not be allowed to use the Recycling Center. Vehicles not requiring a Commercial Driver's License (CDL), as defined by M.R.S.A. shall be permitted access to, or use of the Recycling Center. Vehicles requiring a Commercial Driver's License (CDL), as defined by M.R.S.A. shall not be allowed access to the Recycling Center, unless otherwise approved by the Director of Public Works.
- (d) Any site clearing shall as much as possible result in all wood wastes and stumps being recycled. No stumps shall be deposited at the municipal facility on Dennison Drive in Cape Elizabeth.

Sec. 11-2-7. Resource recovery.

- (a) The municipality may require solid waste and recyclable materials to be separated into such categories as may be established by regulation or governed by signage

at municipal disposal facilities. Solid waste and recyclable materials may be disposed of only in such manner and at such sites and locations as designated.

- (b) No recyclable materials may be placed in the hopper at the transfer station at the Cape Elizabeth Recycling Center.

Sec. 11-2-8. Property rights.

Any solid waste and recyclable materials deposited within the designated public solid waste disposal facilities or into any recyclable bin on town property shall become the property of the Town of Cape Elizabeth or **ecomaine**. No one shall salvage, remove, or carry off any such deposited solid waste or recyclable materials without prior approval of the Town. Material placed in a municipally designated “swap shop” may be removed without prior approval of the town. The Director of Public Works may limit usage of the “swap shop” to 15 minutes per day and may establish other usage rules for the “swap shop” so that the structure is accessible for local residents.

Sec. 11-2-9. Permit required.

No person shall collect or transport solid waste, including but not limited to garbage and recyclables, generated within the Town without obtaining a refuse permit from the municipality and paying the required fee. Any commercial hauler shall obtain a commercial hauler permit upon such terms and conditions established by the town council. Such permits shall be subject to the terms and requirements set forth in this article.

Sec. 11-2-10.

Application for refuse permit. In order to acquire a permit for the collection or disposal of solid waste within the town, the applicant shall submit to the Town such information as the Director of Public Works deems necessary, together with the required fees. Fees for obtaining permits for the collection or transport of solid waste generated within the town shall be established by order of town council.

Sec. 11-2-11. Term of permit.

Commercial hauler permit issued under this article shall be for the calendar year and other permits shall be for such duration as determined by the Director of Public Works.

Sec. 11-2-12. Violations.

Any failure to comply with the requirements of this Article shall be considered a violation. In addition to the penalty provisions set forth in this article, the Director of

Public Works may suspend a refuse permit for up to thirty (30) days for a first violation of this Ordinance and for up to sixty (60) days for a second violation. Any such suspension is appealable to the town manager who after hearing may alter the suspension in any manner but may not extend the suspension period. The town council upon referral of the town manager may suspend or revoke a refuse hauler permit any violation of this for up to 12 months except that any person or entity placing unauthorized hazardous wastes within the town may be suspended permanently from use of the town's municipal disposal facilities. Prior to taking any action on a potential suspension or revocation of a refuse permit, the town council shall notify any person or business to whom the permit was issued and shall hold a hearing.

Sec 11-2-13. Penalties.

Any person who violates any provision of this Ordinance commits a civil violation, punishable by a civil penalty of not less than \$200 and not more than three thousand dollars (\$3000.00) for each violation. Fines shall be recovered upon complaint made by the municipality. Each day upon which a violation continues shall be considered a separate violation. The municipality shall be entitled to recover its attorney's fees and court costs in any action in which the court finds that a violation has occurred. In addition to penalties, the municipality may seek injunctive relief to prevent the continuance of an ongoing or recurring violation.

Article III. Rodent and Vermin Control.

[Adopted eff. 10/1/63 under R. S. 1954, C. 90-A, Sec. 3 (R S. 1964, T30, Sec. 2151).]

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Sec. 11-3-1. Definitions.

For the purpose of this Article, the following definitions shall apply:

(a) The term "building" shall mean any structure, whether public or private, whether vacant or occupied, that is adopted or used: for dwelling occupancy; for the transaction of business; for the rendering of professional service, amusement, the display or sale or storage of goods, wares, merchandise, articles of equipment; for the performance of work or labor; for office buildings, public buildings, stores, theaters, markets, restaurants, warehouses, grain processing, factories, abattoirs, workshops, garages, or structures where domestic or other animals or fowl are kept; for sheds, barns, outbuildings, or other structures or premises used as necessary to any such use.

(b) The term "rodent-proof" or "rodent-proofing" applies to a form of construction which will prevent ingress or egress of rats to or from a given space of building, or gaining access to food, water, or harborage. It consist of the closing and keeping closed, by the use of material impervious to rodents, every opening in foundations, basements, cellars, exterior and interior walls, ground or first floors, roofs, sidewalk gratings, sidewalk openings and other places that may be reached and entered by rodents by climbing, burrowing or gnawing.

(c) The term "openings" shall mean and refer to any openings in the foundation, sidewalls, ground or first floor, basements, and roofs including chimneys, caves, grills, windows, vents, vent pipes, ventilators, sidewalk grates, elevators and space around any pipe, wire or other installations connected with buildings through which rodents may enter.

(d) The term "rodent harborage" shall mean any condition which provides shelter or protection for rodents, thus favoring their multiplying and continued existence.

(e) The term "vermin" shall include noxious little animals or insects such as larvae, files, bed-bugs, roaches, fleas, and mites.

(f) The term "owner" shall mean the actual owner of the buildings, whether individual, partnership, or corporation, or the agent of the building, or other person having custody of the buildings or to whom the rent is paid.

(g) The term "occupant" as used herein shall mean the individual, partnership,

or corporation that has the use of or occupancy of any building, or a portion thereof, whether the actual owner or tenant. In the case of vacant buildings or any vacant portion of a building, the owner, agent or other person having the custody of the building shall have the responsibility of an occupant of a building.

(h) The term "health officer" shall mean the town health officer or his duly appointed representative, of the Town of Cape Elizabeth.

Sec. 11-3-2. Rules and Regulations.

The Town Manager is hereby empowered to promulgate and enforce all reasonable rules and regulations for carrying out the purpose and intent of this ordinance.

Sec. 11-3-3. Written Notice;

Unlawful to Maintain in Infested Condition. It shall be unlawful for the owner or occupant of any premises within the Town of Cape Elizabeth to maintain said premises in a vermin or rodent infested condition after he has notice of that condition.

Sec. 11-3-4. Erection, Alteration, Repair or Extension of Buildings.

It shall be unlawful to erect, repair, alter or extend any building or structure unless such construction, repair or alteration shall render the building or structure rodent-proof in accordance with the definitions contained herein; provided that only such construction, repair or alteration as affects the rat-proof condition of any building or structure shall be considered as subject to the provisions of this Ordinance.

Sec. 11-3-5. Effective Date.

Every existing building and every alteration, addition or extension thereto, shall be rodent-proofed and maintained in such condition, and all vacant or unimproved property shall be kept free of rodent harborage at all times.

Sec. 11-3-6. Permit Required.

It shall be unlawful to demolish any building or structure unless provision is made for rodent and vermin eradication. No permit for the demolition of a building or structure shall be issued by the building inspector until and unless provisions for rodent and vermin eradication have been carried out under supervision of a registered pest control operator.

Sec. 11-3-7. License.

On and after one year from the effective date of this ordinance, no license shall be issued for the storing, processing, preparing, manufacturing, selling or offering for sale of any food, food stuff, or food products until the town health officer or his duly authorized

agent certifies that the building or structure where such operation is to be conducted is of rodent-proof construction or has been rendered rodent-proof.

Sec, 11-3-8. Inspections.

The town health officer or his duly authorized representative is empowered to make such inspections of the interior and exterior of any building or structure as, in his opinion may be necessary, to determine full compliance with the provisions of this ordinance.

Sec, 11-3-9 Notice in Writing.

When any building, structure or premises is found to be rodent or vermin infested, the town health officer or his duly authorized representative shall issue a notice in writing to the owner or occupant setting forth the conditions of such premises and a reasonable time limit to correct the conditions found. Such notice may require the use of necessary measures for rodent eradication, rodent harborage removal, rodent-proofing or vermin eradication deemed essential by the town health officer. Notices may be served by the Town Manager or his duly authorized representative, by the Police Department or by certified mail addressed to the person to be notified.

Sec. 11-3-10. Power to Declare Premises Unfit

If the town health officer or his duly authorized representative, shall find any building, structure or premises so heavily infested with vermin or rodents as to result in an actual or potential hazard to the health of the occupants or to the public health, he shall have the authority to declare the premises unfit for any occupancy or use until vermin or rodents have been eradicated or while vermin or rodents are being eradicated. On each and every occasion, a full report of such findings shall be made to the Town Manager who shall be empowered to take such action as may be necessary to abate the hazard.

Sec. 11-3-11. Creation of Unlawful Condition in Structures.

It shall be unlawful for the occupant, owner, contractor, public utility employee, plumber, or any other person to remove, damage or destroy any part of a building or its appurtenances intended to protect such premises against ingress of rodents, or in any other way create a condition by which ingress for rodents is made possible; provided that this section shall not apply where the interference with the rodent-proofing is made necessary in connection with lawful construction, or repair and the rodent-proofing is promptly restored.

Sec. 11-3-12. Consent to dispose of waste.

No person shall throw, place, deposit or permit any person under his control or employ to throw, place, or deposit any putrid substance, human or animal excretion, dead animal, night soil, filth of any kind, garbage, rubbish, refuse piles, old lumber, or any unwholesome material in or upon any vacant lot, alley, lane, sidewalk or street, beach,

harbor, pond, or stream, or upon any private lot or public grounds within the Town of Cape Elizabeth without the consent of the town health officer or his duly authorized representative.

Sec. 11-3-13. Containers for Garbage.

Sufficient watertight covered metal containers shall be used to receive for storage until collected all accumulation of garbage, petrescible waste, rubbish or other waste.

Sec. 11-3-14. Separate Containers for garbage and nonputrescible waste to be used.

Separate containers shall be provided for garbage and other putrescible waste, and separate containers shall be provided for ashes, rubbish, paper and nonputrescible waste.

Sec. 11-3-15. Animal and bird feeding.

No person shall place food in the open for the feeding of any domesticated fowl, birds, or animals except in such containers that will prevent the scattering of such food upon the ground. After such feeding, such food shall not be allowed to remain where it is accessible to rodents.

Sec. 11-3-16. Storage of feed.

All food and feed for feeding chickens, cows, horses, and other animals shall be kept and stored in rodent free and rodent-proof containers, compartments, or rooms unless kept in a completely rat-proofed building.

Sec. 11-3-17. Registration for pest control.

All persons, firms or corporations intending to engage in the business of pest control in the Town of Cape Elizabeth shall register in writing with the town health official before so engaging and thereafter annually, on or before June 1st stating the name, business affiliation, address and telephone number of the operator as well as the pest control operations that the registrant is equipped to undertake, together with such other information that the Town Health Officer may require. Such registration will also include a signed agreement by the responsible person in charge of the pest control operation to comply with all rules and regulations established by the town health officer and the Town Manager for the safety of the public.

Sec. 11-3-18. Revocation of pest control registration.

Failure on the part of a pest control operator to give evidence or satisfactory performance of control operations on two successive occasions shall be cause for revocation of registration.

Sec. 11-3-19. Proof of certificate of registration before pest control work.

The owner or occupant of any building or structure shall not permit any person, firm, or corporation, to enter upon any building or structure for the purpose of disinfestation or extermination of vermin or rodents until such person, firm or corporation presents a currently valid certificate of registration issued by town health officer.

Sec. 11-3-20. Permit for use of disinfestation or extermination.

No person shall employ for disinfestation or for extermination of rodents or vermin from any building, vessel, or enclosed space, any highly toxic chemical; any poisonous or dangerous gas; any substance emitting poisonous gas, fumes or vapor; cyanide in any form; or sodium fluoroacetate, commonly known as "1080", without first holding a special permit for each such use issued by the town health officer subject to such conditions as the Board of Health may require. When such permits are issued both the Police and Fire Departments shall be notified immediately by the town health officer.

Sec. 11-3-21. Violation; penalty.

Whoever violates any provision of this ordinance or any regulation of the Town Manager made pursuant thereto or any order of the town health officer or his duly authorized representative, or obstructs or interferes with the execution of such order or regulation, shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than \$25.00 nor more than \$100.00 and each days violation or part thereof shall be a separate offense.

Sec. 11-2-22. Appeals from Order.

Any person who feels aggrieved by an order of the town health officer may file an appeal within 10 days from the date of such order to the Town Manager who may reverse the decision; the Town Manager may permit exceptions to or variations from the specific terms of the ordinance in such cases where the enforcement of the provisions of the ordinance may result in undue hardship, subject always to the rule that the Town Manager shall give due consideration to the purposes of the ordinance in promoting public health, safety and welfare.

Article IV. Single Use Carryout Bags

[Adopted eff. December 6, 2017]]

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Sec. 11-4-1. Purpose.

The purpose of this article is to reduce the distribution of single use carryout bags by stores in the Town of Cape Elizabeth, and to encourage the use of reusable bags by residents and visitors of the Town.

Sec. 11-4-2. Definitions.

For the purpose of this Article, the following definitions shall apply:

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

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

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

(c) **Reusable Bag** shall mean a bag that:

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

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

- i. a full-line, self-service market located in a permanent building that sells at retail a line of staple foodstuffs, meats, seafood, produce, household supplies, dairy products or other perishable items;
- ii. a drug store, pharmacy, supermarket, grocery store, convenience store, gift store, or other entity engaged in the retail sale of goods; or
- iii. farm stand

Sec. 11-4-3. Single Use Carryout Bag.

The following provisions shall regulate the use of Single Use Carryout Bags by a store.

- (a) No Store shall provide a Single Use Carryout Bag to a customer at the check stand, cash register, point of sale or other point of departure for the purpose of transporting food or merchandise out of the establishment except as provided in this section.
- (b) A Store may make available for sale to a customer a Single Use Carryout Bag for a minimum charge of five cents (\$0.05).
- (c) All monies collected by a Store for Single Use Carryout Bags under this ordinance may be used by the Store for any lawful purpose.
- (d) All Stores must post signage clearly indicating the per bag charge for Single Use Carryout Bags.
- (e) No Store shall rebate or otherwise reimburse a customer any portion of the minimum charge required in subsection (b).

Sec. 11-4-4. Exemptions.

A Store is exempt from the provisions of this ordinance in a federal, state or local government emergency when the immediate preservation of the public health, safety or welfare requires the use of a Single Use Carryout Bag.

Sec. 11-4-5. Enforcement.

The Town Manager or his/her designee(s) shall have the primary responsibility for enforcement of this ordinance. If the Town Manager or his/her designee(s) determine(s) that a violation of this ordinance has occurred, he/she shall issue a written warning notice to the Store that a violation has occurred. A second violation shall be subject to a fine not exceeding \$100. A third and/or subsequent violation shall be subject to a fine not exceeding \$250 for each violation.

Sec. 11-4-6. Severability.

If any part or provision of this ordinance or the application thereof to any person or circumstances are held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.