



Robert Malley <robert.malley@capeelizabeth.org>

Re: Plastic Bag Rules

1 message

Benjamin McDougal <benjamin.mcdougal@capeelizabeth.org>

Thu, Jan 3, 2019 at 8:10 AM

To: Robert Malley <robert.malley@capeelizabeth.org>

Cc: Kara Lavender Law <karalavenderlaw@gmail.com>

Hi Bob,

I'm a little confused. The council minutes seem to reflect a last minute amendment to exclude non-food establishments from the ordinance requirements (see below)

Page 4 Town Council Minutes November 6, 2017

Moved by Patricia K. Grennon and Seconded by Sara W. Lennon ORDERED, the Cape Elizabeth Town Council approves the proposed ordinance committee amendment to add a new Article IV entitled Single Use Carryout Bags to Chapter 11 Health and Sanitation Ordinance to charge \$0.5 per single use carryout bag (plastic and paper) for all retail stores except in an emergency as presented. This charge does not apply to "bags on a roll" typically used for produce and meats.

Page 4 Town Council Minutes November 6, 2017

Moved by James M. Garvin and Seconded by Patricia K. Grennon ORDERED, the Cape Elizabeth Town Council amends the motion to strike the applicability to non-food establishments. (5 yes) (0 no) (2 recusals Councilor Caitlin Jordan and Councilor Penelope Jordan) Original Motion as Amended: (4 yes) (1 no Councilor Sullivan) (2 recusals Councilor Caitlin and Councilor Penelope Jordan)

My second question is about the definition of reusable bag, see below:

(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.*

I'm wondering if this is intended to read "2.25 mil thick" instead of millimeters.

Thanks for your help,
Ben

Benjamin McDougal
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On Wed, Jan 2, 2019 at 4:23 PM Robert Malley <robert.malley@capeelizabeth.org> wrote:

Hi Ben,

The rules apply to any "Store" as defined in Section 11-4-2. I don't think it is. A milliliter is a measure of volume not length and/or thickness.

Bob

----- Forwarded message -----

From: **Benjamin McDougal** <benjamin.mcdougal@capeelizabeth.org>
Date: Wed, Jan 2, 2019 at 3:59 PM
Subject: Plastic Bag Rules

To: Robert Malley <robert.malley@capeelizabeth.org>
Cc: Maureen O'Meara <maureen.omeara@capeelizabeth.org>

Hi Bob,

A gentleman named Dick Atlee called me last week with some questions about our rules for single use carryout bags. His 2 question were:

1. Do the rules apply to all businesses or just food establishments?
2. Where the rules say 2.25 millimeter, is it intended to be 2.25 mil?

Based on my reading of the ordinance it appears to apply to all retail establishments, however, looking at the minutes from the council meeting, it appears that they amended the ordinance to only apply to food establishments. I'm wondering if someone forgot to amend the ordinance to be consistent with the amendment that the council made. Do you have any insight on this?

The gentlemen also assumed that the 2.25 millimeter should read 2.25 mil. He is wondering if that is a typo.

I checked in with Maureen about this but she said she didn't deal with this after it left the ordinance committee.

Regards,
Ben

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Robert C. Malley
Director of Public Works
Town of Cape Elizabeth
799-4151

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]]

Sec. 11-4-1	Purpose	11-20
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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.