

## CHAPTER 11

### HEALTH and SANITATION

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#### **Article I. Food and Food Service Establishments.**

[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.]

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**Sec. 11-1-1. Purpose.** This Article shall govern the registration and requirements of food service establishments, and the manufacture, sale, storage, delivery and distribution of food and food stuffs in the Town of Cape Elizabeth.

#### **Sec. 11-1-2. Definitions.**

(a) "Food establishment" shall mean any permanent or temporary public or private place within the Town at which food or drink, other than live shellfish, raw vegetables or fruit, in processed, prepared, packaged, mixed, cooked, served, sold in an unpackaged condition, or offered for direct or ultimate distribution to and consumption by the public, including butcher shops or departments, home bakeries, restaurants, dining rooms, lunch rooms or counters, soda fountains, diners, boarding house food services,

catering services, nursing or rest home food services, church, school or other municipal kitchens, cafeteria and facilities, and all areas and facilities used in conjunction therewith.

(b) "Food" - the term food shall include all substances, used for food or drink, and all substances used as components of any article of food or drink, for human consumption.

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

(d) The term "Health Officer" shall mean the Town health officer, or his duly authorized representative.

(e) The term "food handler" shall mean any person who is employed in a food establishment or who handles food during storage, manufacture, preparation, handling, sale or serving in such a manner that some portion of his clothes or body may come in contact with such food or with utensils used in connection therewith.

(f) The term "Person" shall mean person, firm, corporation or association.-

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

(h) The term "food packager" shall mean any person located within the Town who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

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

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

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

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

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

- (a) The name of the person, firm or corporation.
- (b) The residence of such applicant or of each of the individual members of such firm and its principal place of business.
- (c) The kind of food establishment and the nature of the undertaking to be performed or carried on.
- (d) The street address, if any, where such food establishment is to be located.
- (e) New applicants shall be of reputable character regarding which two references shall be provided and such character shall be established to the satisfaction of the health officer.
- (f) Any other relevant information required by the health officer in respect to the undertaking proposed to be conducted, the facilities and equipment of the establishment and the qualification of the applicant.

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

- (a) Floors. Floors shall be of such construction as to be easily cleaned, equipped with proper drainage when necessary, and shall be kept clean and in good repair.
- (b) Walls and Ceilings. Walls and ceilings shall be kept clean and in good repair. All walls and ceilings of areas in which food is stored shall have a smooth, washable, light-colored surface and shall be maintained in a clean and sanitary condition.

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

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

1. The source of light (bulb, tube, or others) in any area shall be protected by fixtures which will prevent any contamination of food should the source of light shatter.
2. Adequate lighting for preparation and handling of food and for cleaning utensils shall consist of an intensity of not less than 20 foot candles of light as measured by an appropriate device. (While light intensity is dependent on several factors including wattage, reflectors, distance, etc., Generally a double 4-foot tube per 64 sq. ft. is deemed adequate.

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

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

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

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

(i) Utensils. All multi-use utensils and all show and display cases or windows, work surface, counters, shelves, refrigerating equipment, sinks, stoves, hood, and other equipment or utensils used for the transportation, storage or display of food in connection with the operation of any food establishment shall be so constructed as to be easily

cleaned and shall be kept clean and in good repair. Utensils containing or plated with cadmium or lead or other poisonous substances shall not be used, except that lead solder may be used for jointing. Approved single-service utensils may be substituted for multiuse utensils; provided that such single-service utensils shall be used only once.

(j) Cleaning and bactericidal treatment of utensils. Utensils and all show and display cases or windows, work services, counters, shelves, tables, refrigerating equipment, stoves, sinks, hoods and other equipment for the transportation of food used in connection with the operation of any food establishment shall be kept clean and free from chips, cracks, open seams, insects, and other contaminating material; furthermore they shall be disinfected in such a manner as to be free from bacilli of the coliform group and to have a total bacteria count of not more than 100 per utensil as determined by test in a laboratory approved for the purpose. All cloths used shall be clean and sanitary. Utensils used in the preparation, storage handling or sale of food shall be thoroughly cleansed and effectively subject to an approved bactericidal process immediately following the day's operation or more frequently if necessary. An adequate supply of hot running water, maintained at not less than 180°F temperature and 15 pounds per inch pressure shall be provided for the purpose of cleansing and disinfection. Drying cloths if used shall be clean and sanitary and used for no other purposes. No article, polish, or other substance containing any poisonous material shall be used for cleaning or polishing any utensils or equipment. No substance containing any poisonous material shall be kept or used as an insecticide or exterminator in any place where food is exposed during sale, preparation, holding or dispensing or in such manner as to contaminate such food.

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

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

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

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

(o) Preparation, storage, handling and sale of food. All food shall be prepared, stored, handled, displayed or sold in such manner as to be protected from dust, fumes, toxic substances, flies, vermin, depredation, and pollution by rodents, droplet infection, overhead leakage, or other contamination. No live animals, or live fowl, except those which are themselves intended for food, shall be kept or allowed in any food

establishment and such animals or poultry intended for slaughter shall be cared for in areas entirely and completely segregated from any room where food is processed, stored or prepared. All approved means necessary for the elimination of flies, roaches, other vermin, and rodents shall be used (see Housing Code).

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

No person who is affected with any disease in a communicable form or who is a carrier of such disease or any person with open lesion or sores shall work in a food establishment except upon authorization of the health officer. The use of tobacco in any room where food is cooked or prepared is prohibited.

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

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

- i. No retail vendor in the Town shall serve or sell prepared food in polystyrene foam containers and no food packager shall package meat, eggs, bakery products, or other food in polystyrene foam containers.
- ii. No retail vendor in the town that sells tangible personal property at retail shall sell polystyrene foam food or beverage containers.
- iii. The Town shall not use polystyrene foam food or beverage containers at any Town facility or Town sponsored event.
- iv. No Town department or facility shall purchase or acquire polystyrene foam food or beverage containers.
- v. All parties who contract with the Town shall be prohibited from using polystyrene foam food and beverage containers in Town facilities or on Town funded projects within the Town.
- vi. Exemptions from a prohibition in using polystyrene foam food containers shall apply to:

- a. The sale and packaging of raw seafood for shipment;
- b. A retail vendor or food packager existing in the Town of Cape Elizabeth prior to [effective date of this ordinance] that has received an exemption from the Town Manager or his/her designee. Prior to granting an exemption, the Town Manager or his/her designee shall receive a written request for an exemption. The written request shall include and the Town Manager or his/her designee shall consider: (1) If polystyrene foam food containers were used by the vendor or food packager prior to [effective date of this ordinance]; and (2) If the use of polystyrene foam food container alternatives will constitute an undue hardship. Undue hardship includes, but is not limited to, situations unique to the food vendor that are not generally applicable to other retail vendors or food packagers in similar circumstances. The Town Manager or his/her designee shall make a written decision on each exemption request.
- c. An emergency when the immediate preservation of public health, safety or welfare requires the use of polystyrene, as determined by the Town Manager or his/her designee.

**Sec. 11-1-6. Temporary Food Service Establishment.** A temporary food service establishment shall comply with all of the provisions of this Article with only such exceptions as the health officer may specifically authorize as not threatening any imminent hazards to public health. Temporary food service establishments which do not fully meet the requirements of this Article may be permitted to operate when food preparation and service are restricted in whatever manner may be prescribed by the health officer.

**Sec. 11-1-7. Inspection of Food Establishments.** The health officer or his representative shall make or cause to be made periodic unannounced inspections, surveys and investigations of food establishments at least every six (6) months for year-round facilities and every 12 months for seasonal facilities in order to determine that all food establishments are constructed, operated and maintained in accordance with the provisions of this ordinance and all rules and regulations hereunder. Similar inspections, surveys and investigations shall be made upon written complaint filed against any establishment. A copy of each inspection report shall be issued to the permit holder or applicant, the Town Manager and any complainant.

**Sec. 11-1-8. Orders to Correct.** If the health officer finds any violation of any provision of this ordinance, any regulations issued hereunder, or any other applicable state or local requirement, he shall issue a written order to the operator of such establishment noting such violations and directing their correction within a reasonable period of time specified in the order, not exceeding 60 days. If the violation imperils the

health of the public, he may immediately order the establishment closed until its correction, for a period not exceeding 30 days. If any violations are not corrected as so ordered, the health officer may issue such further order as he deems required, including the closing to the establishment until correction, or he may seek criminal prosecution therefor under Section 11-1-17.

**Sec. 11-1-9. Right of Entry.** The health officer or his representative shall be accorded free access to all food establishments, and to all premises he has reasonable cause to believe is being used as a food establishment, at all reasonable times for the purpose of inspection and examination of such places. It shall be unlawful to hinder, prevent, or refuse to permit any lawful inspection or investigation authorized in pursuance of this ordinance.

**Sec. 11-1-10. Rules and Regulations.** In order to prevent the consumption by humans of any food that is unwholesome, unsanitary, or otherwise unfit, and in order to prevent such items from moving in commerce or contaminating other products intended for consumption by humans, the health officer in conjunction with the Town Manager may promulgate, from time to time, rules and regulations pertaining to requirements of sanitation, cleanliness and adequacy of facilities, equipment and construction of all food establishments. Such rules and regulations shall also provide for the inspection of such food establishments by the health officer in accordance with, but not in derogation of, the provisions of this ordinance. Such rules and regulations shall establish criteria designed to protect the health and safety of those who prepare, store, handle, or sell such food and shall provide for the condemnation of unwholesome, unsanitary, or otherwise unfit food. The inspection of any food by the health officer may result in approval, or order of condemnation of unwholesome, unsanitary, or otherwise unfit food. The inspection of any food by the health officer may result in approval, or order of disseminate, or an order to retain and hold the same pending further investigation and examination by the Town Manager. It shall be unlawful to dispose of any food ordered retained or held except by the express instructions of the health officer.

**Sec. 11-1-11. Disposal of Unwholesome, Unsanitary or Unfit Food.** The health officer may order condemned any food which is found to be unwholesome, unsanitary or otherwise unfit for purposes of human consumption or dangerous to the public health. Such items shall be destroyed, in such a manner as to prevent consumption by humans, under direct supervision of the health officer or his representative and in accordance with the rules and regulations promulgated by the health officer. The health officer may order to be retained under embargo and held apart from all other food and not utilized for any purpose until such time as has been further inspected or examined and either approved or ordered condemned.

**Sec. 11-1-12. Sampling.** Samples of food in a quantity sufficient for analysis or examination may be taken by the health officer, without cost, whenever necessary for the efficient conduct of inspections and investigatory procedure. When samples are taken the investigators shall provide some responsible person in the food establishment with a receipt therefor in which is identified the type and quantity of the sample obtained.



**Sec. 11-1-13. Approved Sources.** All milk and milk products, ice cream, clams, shellfish-, meat and meat products shall be from approved sources. All oysters and clams shall be from a source approved by the State Department of Agriculture. Shippers from sources out of state shall be on the approved list issued by the U.S.P.H.S. All shucked shellfish shall be kept until used in containers in which they are placed at the shucking plant. Such containers shall have thereon or attached thereto, a label, stamp or tag which shall show clearly and legibly the source, shipper's name and address.

**Sec. 11-1-14. Uninspected Meat Prohibited.** No meat or meat products shall be sold, let, transported or offered for sale unless such meat or meat products shall bear in a clear and legible manner the "inspected and passed" stamp or other recognized identification of the U.S. or State Department of Agriculture or that of the Department of Health of the City of Portland.

**Sec. 11-1-15. Records and Reports.** It shall be the duty of every person holding a permit to operate or maintain a food establishment to furnish such records and information as the health officer shall deem necessary to ascertain compliance with this ordinance.

**Sec. 11-1-16. Plans and Specifications.** Whenever it is proposed to erect, alter or remodel any food establishment, it shall be necessary to submit to the building inspector, and to the health officer, detailed plans and specifications, for their approval as complying with this ordinance and any applicable state or local health requirements, prior to starting construction. Such plans shall include the location and layout of equipment and facilities; the layout and arrangement of all areas in which operations are to be conducted; and the materials to be used in construction of working areas and in utensils and equipment.

**Sec. 11-1-17. Penalty.** Any person, firm or corporation who shall violate any order of the health officer, under this ordinance or any rule or regulation promulgated under authority of this ordinance shall, upon conviction, be fined a sum not less than \$25.00 and not to exceed \$100.00 or be sentenced to six months imprisonment, or both, and each day's continuation of violation hereunder shall be deemed a separate offense.

**Sec. 11-1-18. Appeal.** Any person who is denied a permit under the provisions of this ordinance may file an appeal within ten days from the date of such denial to the Town Manager, who may permit exceptions to or variations from the specific terms of this ordinance in such cases where the enforcement of this provision of the ordinance may result in undue hardship. [Amended eff. 1/12/94]

**Sec. 11-1-19. Applicability.** Wherever the requirements of this ordinance vary from those of any other lawfully adopted regulation, the more restrictive provision or that imposing the higher standards shall govern.

**Sec. 11-1-20. Severability.** If any part or provision of this ordinance or the application thereof to any person or circumstances is 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.

## **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 hauler 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 consists 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, flies, 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. 11-32-22. 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 Plastic Bags**

**[Adopted eff. \_\_\_\_\_]**

<b><u>Sec. 11-4-1</u></b>	<b><u>Purpose</u></b>	<b><u>11-20</u></b>
<b><u>Sec. 11-4-2</u></b>	<b><u>Definitions</u></b>	<b><u>11-20</u></b>
<b><u>Sec. 11-4-3</u></b>	<b><u>Single Use Carryout Bag</u></b>	<b><u>11-21</u></b>
<b><u>Sec. 11-4-4</u></b>	<b><u>Exemptions</u></b>	<b><u>11-22</u></b>
<b><u>Sec. 11-4-5</u></b>	<b><u>Enforcement</u></b>	<b><u>11-22</u></b>
<b><u>Sec. 11-4-6</u></b>	<b><u>Severability</u></b>	<b><u>11-22</u></b>

**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 incentivize the use of reusable bags by residents 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 bags but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

(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; or
- ii. a drug store, pharmacy, supermarket, grocery store, convenience food store, food mart, or other entity engaged in the retail sale of a limited line of goods that includes milk, bread, soda, and snack foods.

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

**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) Notwithstanding this Section, no Store may make available for sale a Single-Use Carryout Bag unless the amount of the sale of the Single-Use Carryout is separately itemized on the sales receipt.

(f) 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 situation deemed by the Town Manager, in his/her sole discretion, to be an emergency for the immediate preservation of the public health, safety or welfare.

**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 within a year of the written warning shall be subject to a fine not exceeding \$250. A third and/or subsequent violation within a one-year period, measured from the most recent written warning, shall be subject to a fine not exceeding \$500.

**Sec. 11-4-6. Severability.** If any part or provision of this ordinance or the application thereof to any person or circumstances is 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.