

**Polystyrene Foam and Plastic Bag
Ordinance Amendments**

**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" -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.

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

(e) The term "Health Officer" shall mean the Town health officer, or his duly authorized representative. ~~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) "Polystyrene foam" shall mean blown polystyrene and expanded and extruded foams (sometimes incorrectly called Styrofoam®, a Dow Chemical Company trademarked form

1 of polystyrene foam insulation) that are thermoplastic petrochemical materials utilizing a
2 styrene monomer and processed by any number of techniques including, but not limited
3 to, fusion of polymer spheres (expandable bead polystyrene), injection molding, foam
4 molding, and extrusion-blow molding (extruded foam polystyrene). Polystyrene foam is
5 generally used to make cups, bowls, plates, trays, clamshell containers, meat trays and
6 egg cartons. For the purposes of this ordinance, the term "polystyrene" shall not include
7 clear polystyrene known as "oriented polystyrene."~~The term "temporary food service~~
8 ~~establishment" shall be any food service~~
9 ~~establishment which operates for a temporary period of time, not to exceed two (2)~~
10 ~~weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory~~
11 ~~gathering.~~

12
13 (h) "Prepared food" shall mean food or beverages which are served at the food vendor's
14 location having been previously prepared elsewhere, or are prepared at the vendor's
15 location by cooking, chopping, slicing, mixing, brewing, freezing or squeezing. Prepared
16 food does not mean raw uncooked meat or eggs. Prepared food may be eaten either on or
17 off premises.

18
19 (i) "Retail vendor" shall mean any person, restaurant, store, shop, sales outlet or other
20 establishment including, without limitation, a grocery store, convenience store or
21 delicatessen, located within the Town that offers prepared food for retail sale.

22
23 (j) ~~The term "temporary food service establishment" shall be any food service~~
24 ~~establishment which operates for a temporary period of time, not to exceed two (2)~~
25 ~~weeks, in connection with a fair, carnival, circus, public exhibition, or similar transitory~~
26 ~~gathering.~~

27
28
29 (k) ~~The term "utensils" shall include all kitchenware, tableware, glassware, cutlery,~~
30 ~~containers, and other kinds of utensils and equipment with which food comes in~~
31 ~~contact during preparation, processing, storage, handling or sale.~~

32
33
34 **Sec. 11-1-3. Permit Required.** No person, firm, or corporation shall engage in the
35 business of conducting a food establishment in the Town of Cape Elizabeth without first
36 obtaining a permit therefor issued upon application to the health officer and upon his
37 approval of plans for such establishment, the character and qualifications of the applicant
38 and inspection of the location of said establishment. The fee for permanent, temporary or
39 seasonal food service establishments shall be as determined by the Town Council from
40 time to time. The permit shall be posted in a conspicuous place at the establishment for
41 which issued, visible to the public on an inside wall; the permits is the property of the
42 Town and shall at all times be kept in a clean condition, protected against mutilation, soil
43 or damage. Each permit shall be for the person and location specified therein and shall
44 not be transferable to any other person or location. Upon the transfer of a food service
45 establishment, the transferee shall submit new application to the health officer and shall
46 not commence operations until a new permit is issued therefor.

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

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

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

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

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

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

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

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

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

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

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

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

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

44 2. Adequate lighting for preparation and handling of food and for cleaning
45 utensils shall consist of an intensity of not less than 20 foot candles of
46 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° temperature and 15 pounds per inch

1 pressure shall be provided for the purpose of cleansing and disinfection. Drying cloths if
2 used shall be clean and sanitary and used for no other purposes. No article, polish, or
3 other substance containing any poisonous material shall be used for cleaning or polishing
4 any utensils or equipment. No substance containing any poisonous material shall be kept
5 or used as an insecticide or exterminator in any place where food is exposed during sale,
6 preparation, holding or dispensing or in such manner as to contaminate such food.

7
8 (k) Storage and handling of equipment. After bactericidal treatment, utensils
9 shall be stored in a clean, dry place, protected from dust or other contamination and shall
10 be handled in such manner as to prevent contamination. Single-service utensils shall be
11 purchased only in sanitary containers and stored in a clean, dry place until used, and shall
12 be handled in a sanitary manner.

13
14 (l) Disposal of Wastes. Pending ultimate removal, all garbage, trash and other
15 waste shall be kept in suitable receptacles and disposed of in an approved manner, in
16 accordance with the Housing Code.

17
18 (m) Refrigeration. All readily perishable food shall be kept properly refrigerated
19 at all times except when being processed, prepared or served.

20
21 (n) Wholesomeness of Food. All Food shall be clean, wholesome, free from
22 spoilage and so prepared as to be safe for human consumption. All food shall be from
23 approved sources.

24
25 (o) Preparation, storage, handling and sale of food. All food shall be prepared,
26 stored, handled, displayed or sold in such manner as to be protected from dust, fumes,
27 toxic substances, flies, vermin, depredation, and pollution by rodents, droplet infection,
28 overhead leakage, or other contamination. No live animals, or live fowl, except those
29 which are themselves intended for food, shall be kept or allowed in any food
30 establishment and such animals or poultry intended for slaughter shall be cared for in
31 areas entirely and completely segregated from any room where food is processed, stored
32 or prepared. All approved means necessary for the elimination of flies, roaches, other
33 vermin, and rodents shall be used (see Housing Code).

34
35 (p) Employees. No food handlers in any food establishment shall engage in any
36 practice which is unsanitary or which tends to be detrimental to the cleanliness and
37 sanitation of the food establishment or the health of the patrons thereof, all persons
38 working in food establishments shall keep clean and shall wear clean outer garments.
39 Head bands, caps or hair nets or head cover shall be worn by food handlers working over
40 unprotected food and shall be kept reasonably clean and shall be used for no other
41 purpose than for use during food handling. Special types of clothing as are deemed
42 essential by the health officer may be required.

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

1
2 (q) Premises. The premises, both inside and out, of all food establishments shall
3 be kept clean and free of litter and refuse. Stoves, counter tops, tables, bare floors,
4 lavatories, and other frequently used solid surfaces shall be cleaned daily under the
5 supervision of the manager or owner. Soap and hot water of not less than 180°F. shall
6 be used for washing and there shall be a hot water rinse for all these surfaces.
7

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

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

1 his/her designee shall make a written decision on each exemption
2 request.

3
4 c. A federal, state or local government emergency when the
5 immediate preservation of public health, safety or welfare requires
6 the use of polystyrene foam.
7

8 **Sec. 11-1-6. Temporary Food Service Establishment.** A temporary food service
9 establishment shall comply with all of the provisions of this Article with only such
10 exceptions as the health officer may specifically authorize as not threatening any
11 imminent hazards to public health. Temporary food service establishments which do not
12 fully meet the requirements of this Article may be permitted to operate when food
13 preparation and service are restricted in whatever manner may be prescribed by the health
14 officer.
15

16 **Sec. 11-1-7. Inspection of Food Establishments.** The health officer or his
17 representative shall make or cause to be made periodic unannounced inspections, surveys
18 and investigations of food establishments at least every six (6) months for year-round
19 facilities and every 12 months for seasonal facilities in order to determine that all food
20 establishments are constructed, operated and maintained in accordance with the
21 provisions of this ordinance and all rules and regulations hereunder. Similar inspections,
22 surveys and investigations shall be made upon written complaint filed against any
23 establishment. A copy of each inspection report shall be issued to the permit holder or
24 applicant, the Town Manager and any complainant.
25

26 **Sec. 11-1-8. Orders to Correct.** If the health officer finds any violation of any
27 provision of this ordinance, any regulations issued hereunder, or any other applicable
28 state or local requirement, he shall issue a written order to the operator of such
29 establishment noting such violations and directing their correction within a reasonable
30 period of time specified in the order, not exceeding 60 days. If the violation imperils the
31 health of the public, he may immediately order the establishment closed until its
32 correction, for a period not exceeding 30 days. If any violations are not corrected as so
33 ordered, the health officer may issue such further order as he deems required, including
34 the closing to the establishment until correction, or he may seek criminal prosecution
35 therefor under Section 11-1-17.
36

37 **Sec. 11-1-9. Right of Entry.** The health officer or his representative shall be accorded
38 free access to all food establishments, and to all premises he has reasonable cause to
39 believe is being used as a food establishment, at all reasonable times for the purpose of
40 inspection and examination of such places. It shall be unlawful to hinder, prevent, or
41 refuse to permit any lawful inspection or investigation authorized in pursuance of this
42 ordinance.
43

44 **Sec. 11-1-10. Rules and Regulations.** In order to prevent the consumption by humans
45 of any food that is unwholesome, unsanitary, or otherwise unfit, and in order to prevent
46 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

1 permit to operate or maintain a food establishment to furnish such records and
2 information as the health officer shall deem necessary to ascertain compliance with this
3 ordinance.

4
5 **Sec. 11-1-16. Plans and Specifications.** Whenever it is proposed to erect, alter or
6 remodel any food establishment, it shall be necessary to submit to the building inspector,
7 and to the health officer, detailed plans and specifications, for their approval as
8 complying with this ordinance and any applicable state or local health requirements, prior
9 to starting construction. Such plans shall include the location and layout of equipment
10 and facilities; the layout and arrangement of all areas in which operations are to be
11 conducted; and the materials to be used in construction of working areas and in utensils
12 and equipment.

13
14 **Sec. 11-1-17. Penalty.** Any person, firm or corporation who shall violate any order of
15 the health officer, under this ordinance or any rule or regulation promulgated under
16 authority of this ordinance shall, upon conviction, be fined a sum not less than \$25.00 and
17 not to exceed \$100.00 or be sentenced to six months imprisonment, or both, and each
18 day's continuation of violation hereunder shall be deemed a separate offense.

19
20 **Sec. 11-1-18. Appeal.** Any person who is denied a permit under the provisions of this
21 ordinance may file an appeal within ten days from the date of such denial to the Town
22 Manager, who may permit exceptions to or variations from the specific terms of this
23 ordinance in such cases where the enforcement of this provision of the ordinance may
24 result in undue hardship. [Amended eff. 1/12/94]

25
26 **Sec. 11-1-19. Applicability.** Wherever the requirements of this ordinance vary from
27 those of any other lawfully adopted regulation, the more restrictive provision or that
28 imposing the higher standards shall govern.

29
30 **Sec. 11-1-20. Severability.** If any part or provision of this ordinance or the application
31 thereof to any person or circumstances is held invalid, the remainder of the ordinance,
32 including the application of such part or provision to other persons or circumstances,
33 shall not be affected thereby and shall continue in full force and effect. To this end,
34 provisions of this ordinance are severable.

35
36
37
38 **Article IV. Single Use Carryout Bags**

39 [Adopted eff. _____]

40		
41	<u>Sec. 11-4-1 Purpose</u>	<u>11-20</u>
42	<u>Sec. 11-4-2 Definitions</u>	<u>11-20</u>
43	<u>Sec. 11-4-3 Single Use Carryout Bag</u>	<u>11-21</u>
44	<u>Sec. 11-4-4 Exemptions</u>	<u>11-22</u>
45	<u>Sec. 11-4-5 Enforcement</u>	<u>11-22</u>
46	<u>Sec. 11-4-6 Severability</u>	<u>11-22</u>

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

5
6 **Sec. 11-4-2. Definitions.** For the purpose of this Article, the following definitions shall
7 apply:

8
9 **(a) Single Use Carryout Bag** shall mean a bag other than a Reusable Bag provided at the
10 check stand, cash register, point of sale or other point of departure for the purpose of
11 transporting food or merchandise out of the establishment. The term Single Use Carryout
12 Bag includes compostable and biodegradable bags¹ but does not include Reusable Bags,
13 Produce Bags, Product Bags or bags provided by pharmacists to contain prescription
14 drugs.

15
16 ¹ Compostable and biodegradable bags are included in this list because they do not
17 naturally decompose and require processing in an industrial facility to biodegrade.

18
19 **(b) Produce Bag or Product Bag** shall mean any bag without handles used exclusively
20 to carry produce, meats, seafood, other food items or merchandise to the point of sale
21 inside a store or to prevent such items from coming into direct contact with other
22 purchased items.

23
24 **(c) Reusable Bag** shall mean a bag that:

- 25
26 i. is designed and manufactured to withstand repeated uses over a period of
27 time;
28 ii. is machine washable or made from a material that can be cleaned and
29 disinfected regularly;
30 iii. is at least 2.25 millimeters thick if made from plastic;
31 iv. has a minimum lifetime of 75 uses; and
32 v. has the capability of carrying a minimum of 18 pounds.

33
34 **(d) Store** shall mean any of the following retail establishments located within the Town:

- 35
36 i. a full-line, self-service market located in a permanent building that sells at
37 retail a line of staple foodstuffs, meats, seafood, produce, household
38 supplies, dairy products or other perishable items;
39 ii. a drug store, pharmacy, supermarket, grocery store, convenience food store,
40 food mart or other entity engaged in the retail sale of a limited line of goods
41 that includes milk, bread, soda, and snack foods; or
42 iii. farm stand.

43
44 Store does not mean businesses at which foodstuffs are an incidental part of the business.
45 Food sales will be considered to be “incidental” if such sales comprise no more than two

1 percent (2%) of the business' gross sales in the Town as measured by the dollar value of
2 food sales as a percentage of the dollar value of total sales at any single location.

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

6
7 (a) No Store shall provide a Single Use Carryout Bag to a customer at the check
8 stand, cash register, point of sale or other point of departure for the purpose of
9 transporting food or merchandise out of the establishment except as provided in this
10 section.

11
12 (b) A Store may make available for sale to a customer a Single Use Carryout Bag for
13 a minimum charge of five cents (\$0.05).

14
15 (c) All monies collected by a Store for Single Use Carryout Bags under this
16 ordinance may be used by the Store for any lawful purpose.

17
18 (d) All Stores must post signage clearly indicating the per bag charge for Single Use
19 Carryout Bags.

20
21 (e) Notwithstanding this Section, no Store may make available for sale a Single Use
22 Carryout Bag unless the amount of the sale of the Single Use Carryout Bag is separately
23 itemized on the sales receipt.

24
25 (f) No Store shall rebate or otherwise reimburse a customer any portion of the
26 minimum charge required in subsection (b).

27
28 **Sec. 11-4-4. Exemptions.** A Store is exempt from the provisions of this ordinance in a
29 federal, state or local government emergency when the immediate preservation of the
30 public health, safety or welfare requires the use of a Single Use Carryout Bag.

31
32 **Sec. 11-4-5. Enforcement.** The Town Manager or his/her designee(s) shall have the
33 primary responsibility for enforcement of this ordinance. If the Town Manager or his/her
34 designee(s) determine(s) that a violation of this ordinance has occurred, he/she shall issue
35 a written warning notice to the Store that a violation has occurred. A second violation
36 shall be subject to a fine not exceeding \$100. A third and/or subsequent violation shall be
37 subject to a fine not exceeding \$250 for each violation.

38
39 **Sec. 11-4-6. Severability.** If any part or provision of this ordinance or the application
40 thereof to any person or circumstances is held invalid, the remainder of the ordinance,
41 including the application of such part or provision to other persons or circumstances,
42 shall not be affected thereby and shall continue in full force and effect. To this end,
43 provisions of this ordinance are severable.

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