

## MEMORANDUM

TO: Cape Elizabeth Town Council  
FROM: Ordinance Committee  
DATE: September 5, 2017  
SUBJECT: Polystyrene Foam and Plastic Bag Ordinances

### Introduction

At the December 12, 2016 meeting, the Town Council referred to the Ordinance Committee review of a recommendation by the Recycling Committee to regulate Single Use Carryout bags. The Ordinance Committee received an introductory presentation from the Recycling Committee on plastic bags and polystyrene foam and reviewed amendments to the Health and Sanitation Ordinance (Chapter 11) at the July 11th, August 8th and August 15th meetings.

### Polystyrene Foam

The Recycling Committee is recommending a ban on polystyrene foam. It has been banned in Portland and South Portland. Polystyrene foam pollutes the environment by breaking into small balls that are difficult to pick up and are transported by wind. Styrene and benzene, which are components of polystyrene foam, are both carcinogenic. There are good alternatives to polystyrene and many businesses have already transitioned to more environmentally friendly packaging.

The ordinance amendments have been added to Article I, Foods and Food Service Establishments, in the Health and Sanitation Ordinance (Chapter 11). The proposed ordinance amendments ban the use of polystyrene foam, except for perishable food shipment and in an emergency.

### Single Use Carryout Bags

The Recycling Committee is recommending that a \$.05 per Single Use Carryout Bag (plastic and paper) charge be required for all food stores to generally reduce community waste volume and because these plastics are hard to recycle. Ecomaine no longer accepts plastic bags for recycling. The bags clog the recycling machinery at Ecomaine, requiring the equipment to be shut down 1-2 times a day to allow employees to climb into the machinery and remove the bags. Recycling committee members (Matt Faulkner) visited almost every retail store and restaurant in Cape Elizabeth 3 times to hand out brochures and talk about these recycling initiatives. Most businesses are supportive.

The ordinance amendments have been added as a new Article IV to the Health and Sanitation Ordinance. The proposed ordinance amendments are very similar to the ordinances adopted in Portland and South Portland. The 5 cent charge does not apply to "bags on a roll" typically used for produce and meats and the amendments include an exemption in an emergency.5 cent charge retained by business.

### Implementation

The Ordinance Committee discussed the need for public education. Councilor Garvin noted that recycling rates have flattened and this is the next step to reduce waste. The Ordinance Committee encouraged the Recycling Committee to reach out to all vendors, booster clubs, event facilities including caterers, etc. The Recycling Committee can also elevate the public's understanding of what is realistically recyclable or compostable.

### Conclusion

The draft amendments have been reviewed and revised by Town Attorney John Wall.

Ordinance Committee member Caitlin Jordan recused herself from this item and Town Council Chair Jamie Garvin participated as a committee member. The Ordinance Committee voted 3-0 to recommend the amendments to the Town Council for consideration.

**Polystyrene Foam and Plastic Bag  
Ordinance Amendments**

**CHAPTER 11  
HEALTH and SANITATION**

<b>Article I.</b>	<b>Foods and Food Service Establishments</b>	<b>11-1</b>
<b>Article II.</b>	<b>Solid Waste Disposal Ordinance</b>	<b>11-10</b>
<b>Article III.</b>	<b>Rodent and Vermin Control</b>	<b>11-16</b>
<b>Article IV.</b>	<b>Single Use Carryout Bags</b>	<b>11-20</b>

**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" 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.

(b) "Food establishment" shall mean any permanent or temporary public or private place within the Town at which food or drink is 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.

For the purposes of this chapter of the Ordinance, "food establishment" shall not include businesses that solely involve the packaging and shipment of live shellfish or raw vegetables or fruits.

(c) "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.

(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.

(e) "Health Officer" shall mean the Town health officer, or his/her duly authorized representative.

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

(g) "Person" shall mean a human being as well as a firm, a corporation, or an association.

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Deleted: vegetables or fruit, in processed, prepared, packaged, mixed, cooked, served, sold in an

Deleted: unpackaged condition, or offered for direct or ultimate distribution to and consumption

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Deleted: catering services, nursing or rest home food services, church, school or other municipal

Deleted: kitchens, cafeteria and facilities, and all areas and facilities used in conjunction therewith.

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

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

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

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

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

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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.

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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.

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- 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

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- 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 perishable food 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

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

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

**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.

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#### **Article IV. Single Use Carryout Bags**

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

**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.

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

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(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<sup>1</sup> but does not include Reusable Bags, Produce Bags, Product Bags or bags provided by pharmacists to contain prescription drugs.

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<sup>1</sup> 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

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1 inside a store or to prevent such items from coming into direct contact with other  
2 purchased items.

3  
4 **(c) Reusable Bag** shall mean a bag that:

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- 5  
6 i. is designed and manufactured to withstand repeated uses over a period of  
7 time;  
8 ii. is machine washable or made from a material that can be cleaned and  
9 disinfected regularly;  
10 iii. is at least 2.25 millimeters thick if made from plastic;  
11 iv. has a minimum lifetime of 75 uses; and  
12 v. has the capability of carrying a minimum of 18 pounds.

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13  
14 **(d) Store** shall mean any of the following retail establishments located within the Town:

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- 15  
16 i. a full-line, self-service market located in a permanent building that sells at  
17 retail a line of staple foodstuffs, meats, seafood, produce, household  
18 supplies, dairy products or other perishable items;  
19 ii. a drug store, pharmacy, supermarket, grocery store, convenience food store,  
20 food mart or other entity engaged in the retail sale of a limited line of goods  
21 that includes milk, bread, soda, and snack foods; or  
22 iii. farm stand.

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23  
24 Store does not mean businesses at which foodstuffs are an incidental part of the business.  
25 Food sales will be considered to be "incidental" if such sales comprise no more than two  
26 percent (2%) of the business' gross sales in the Town as measured by the dollar value of  
27 food sales as a percentage of the dollar value of total sales at any single location.

28  
29 **Sec. 11-4-3. Single Use Carryout Bag.** The following provisions shall regulate the use  
30 of Single Use Carryout Bags by a store.

31  
32 (a) No Store shall provide a Single Use Carryout Bag to a customer at the check  
33 stand, cash register, point of sale or other point of departure for the purpose of  
34 transporting food or merchandise out of the establishment except as provided in this  
35 section.

36  
37 (b) A Store may make available for sale to a customer a Single Use Carryout Bag for  
38 a minimum charge of five cents (\$0.05).

39  
40 (c) All monies collected by a Store for Single Use Carryout Bags under this  
41 ordinance may be used by the Store for any lawful purpose.

42  
43 (d) All Stores must post signage clearly indicating the per bag charge for Single Use  
44 Carryout Bags.

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

4  
5 (f) No Store shall rebate or otherwise reimburse a customer any portion of the  
6 minimum charge required in subsection (b).

7  
8 **Sec. 11-4-4. Exemptions.** A Store is exempt from the provisions of this ordinance in a  
9 federal, state or local government emergency when the immediate preservation of the  
10 public health, safety or welfare requires the use of a Single Use Carryout Bag.

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

18  
19 **Sec. 11-4-6. Severability.** If any part or provision of this ordinance or the application  
20 thereof to any person or circumstances is held invalid, the remainder of the ordinance,  
21 including the application of such part or provision to other persons or circumstances,  
22 shall not be affected thereby and shall continue in full force and effect. To this end,  
23 provisions of this ordinance are severable.

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and all substances used as components of any article of food or drink, for human		
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The term "utensils" shall include all kitchenware, tableware, glassware, cutlery, containers, and other kinds of utensils and equipment with which food comes in		
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contact during preparation, processing, storage, handling or sale.		
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The term "Health Officer" shall mean the Town health officer, or his duly		
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The term "food handler" shall mean any person who is employed in a food		
<b>Page 2: [6] Deleted</b>	<b>Microsoft Office User</b>	<b>8/9/2017 3:32:00 PM</b>
establishment or who handles food during storage, manufacture, preparation, handling,		
<b>Page 2: [7] Deleted</b>	<b>Microsoft Office User</b>	<b>8/9/2017 3:32:00 PM</b>
sale or serving in such a manner that some portion of his clothes or body may come in		
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contact with such food or with utensils used in connection therewith.		