



Cape Elizabeth Town Council Minutes

Monday, November 6, 2017

7:00 p.m.

Cape Elizabeth Town Hall

James M. "Jamie" Garvin, Chairman
Patricia K. Grennon
Caitlin R. Jordan
Penelope A. Jordan
Sara W. Lennon
Katharine N. Ray
Jessica L. Sullivan

The meeting was convened at 7:03 p.m. by Town Councilor Chairman James M. "Jamie" Garvin.

Pledge of Allegiance to the Flag

Roll Call by the Town Clerk

All members of the town council were present.

Debra M. Lane, Town Clerk
Robert C. Malley, Director of Public Works
Matthew E. Sturgis, Town Manager

Recognition of Councilor Grennon and Councilor Ray's Last Regular Meeting

Councilor Grennon and Councilor Ray were recognized and thanked for their service on the town council. Councilor Grennon has served 3 years and Councilor Ray a total of 14 years; 8 years school board and 6 years town council.

Town Council Reports and Correspondence

Councilor Penelope Jordan encouraged citizens to participate in the online conversation and questions posed by the Comprehensive Plan Committee. The online conversation is one mechanism for the committee to obtain feedback from citizens.

Councilor Sullivan attended the last meeting of the Cumberland County Finance Committee. A 4.49% increase is being recommended to the County Commissioners.

Councilor Ray said she has enjoyed her service on the town council, has tried to make rounded decisions and thanked the town and school employees.

Councilor Grennon said it's been an honor and pleasure to serve and thanked staff, the council and manager for their work during her tenure.

Chairman Garvin clarified the reason for moving the regular November meeting from 11/13 to 11/6 was to accommodate a request from a long-serving, outgoing councilor with a scheduling conflict. At the 10/11 meeting, it was a consensus of the council to move the meeting date which was subsequently changed on the online meeting calendar. The change was formally voted on at the 10/30 workshop as a procedural vote. The decision to hold the 10/30 workshop following the aftermath of the storm may have a varied opinion whether it should be held however the council made the best decision at the time and tried to get the word out by the town's website and social media.

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Meeting Reminder

2018 Council Caucus – Monday, November 13, 7:00 p.m. Town Hall - Jordan Conference Room

Finance Committee Report

Councilor Sullivan and Manager Sturgis reviewed the dashboard ending 10/31.

Citizen Opportunity for Discussion of Items Not on the Agenda

Leslie Skillin, Trama Intervention Program reviewed the program and the number of Cape Elizabeth residents that have been served. She thanked the councilor for their support.

Christopher McCarthy, 9 Salt Spray Lane asked for a recap of the October 30 workshop. Chairman Garvin responded.

Town Manager's Monthly Report

Town Manager's Report
November 6, 2017

The past week was a challenge to the Town's forces, public works, public safety, and our other services all faced the challenges of Cape Elizabeth residents with the damages from Monday morning's storm.

I would like to take the opportunity to thank our public works crew who came in starting at 2 am to survey and respond to storm damages. Their work in responding to down trees, identifying down wires, and addressing immediate flooding assisted in allowing other departments to respond.

Public safety was also deployed with a strong presence from our Fire and Police Departments and the Fire / Police volunteers. Their dedication is gratefully appreciated as many left their homes while facing the same challenges they were responding to. To place this in perspective, the Fire Department had 52 dispatches on Monday, which is the equivalent to roughly six weeks of regular calls for service.

I would also like to give thanks to the Thomas Memorial Library and the staff for providing for many a virtual office when the library was one of the few locations in Town that had a functioning internet. The staff arranged additional tables and chairs to ensure that those who needed it had a place to work.

Finally, I have some sad news to share, as Russell Packett, our Director of Community Services passed away last Tuesday morning. Russell had worked for the Town since 2012, and I had met with him just ten days ago to begin a plan for his return. The staff are all greatly saddened by his loss and have extended our sympathies. There will be a celebration of life in Russell's memory on November 19th at 1 pm at the Hilton Garden Inn in Freeport.

Respectfully submitted,

Matthew E Sturgis, CMA
Town Manager

Review of Draft Minutes of October 11, 2017

Moved by Sara W. Lennon and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council approves the minutes of the meeting held on October 11, 2017 as written.

(7 yes) (0 no)

Public Hearing Polystyrene Foam and Plastic Bag Ordinances

Chairman Garvin opened the public hearing at 7:40 p.m.

Henry Barksdale, 8 Algonquin Road asked if similar ordinances in Portland and South Portland are effective.

Adam Steinman, 49 Shipwreck Cove Road said he doesn't have facts but similar ordinances have been effective in Portland and South Portland.

Aaron Anker, 5 Algonquin Road asked which side of history does the council want to be on. The proposal "is on the right trajectory."

Ginny Gill, 17 Hunts Point Road asked the council to think about the impact plastic bags have entering the ocean; less plastic the better.

Penny Jordan, 21 Wells Road asked if the definition of store was "an either or perspective or could it be nuanced."

After hearing no further comments the public hearing was closed at 7:46 p.m.

Item #136-2017 Polystyrene Foam and Plastic Bag Ordinances

Councilors Penelope & Caitlin Jordan were recused from discussion and voting on this topic at the 12/12/2016 town council meeting.

Intro – Councilor Grennon, Chairman Ordinance Committee

Moved by Jessica L. Sullivan and Seconded by Katherine N. Ray

ORDERED, the Cape Elizabeth Town Council votes to separate the vote between polystyrene and plastic bags.

(5 yes) (0 no) (2 recusals Councilor Caitlin Jordan and Councilor Penelope Jordan)

Moved by Patricia K. Grennon and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council approves the proposed ordinance committee amendment to Chapter 11 Health and Sanitation Ordinance, Article I Foods and Food Service Establishments to ban polystyrene foam, except for perishable food shipment and in an emergency as presented.

(5 yes) (0 no) (2 recusals Councilor Caitlin Jordan and Councilor Penelope Jordan)

Moved by Patricia K. Grennon and Seconded by Sara W. Lennon

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

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Moved by James M. Garvin and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council amends the motion to strike the applicability to non-food establishments.

(5 yes) (0 no) (2 recusals Councilor Caitlin Jordan and Councilor Penelope Jordan)

Original Motion as Amended: (4 yes) (1 no Councilor Sullivan) (2 recusals Councilor Caitlin and Councilor Penelope Jordan)

See Attachment

Item #137-2017 Continued Discussion of Paper Streets (Lighthouse Point Road, Surfside Avenue and Atlantic Place)

Public Comments

Richard Bryant, 55 Spurwink Avenue said there is a flaw in the motion to deem vacation; the normal vacation process should be used. Don't act tonight, allow more time for compromise.

Paul Moson, 22 Trundy Road provided an update on the SOS (Save Our Shoreline) petition; 752 signatures and growing. Signatures include residents from outside of the Trundy Point neighborhood.

Anne Swift-Kayatta, 14 Stone Bridge Road and former town councilor. Vacation would be giving away town assets and taking away rights; giving large gifts to a small amount of residents.

Mary Ann Lynch, 2 Olde Colony Lane and former town councilor. The meeting is illegal as the procedural motion at the October 30 workshop was invalid. Vacation is an irrevocable loss to the community.

Andy Ingalls, 9 Waumbek Road supports vacation. Are we going to avoid the will of the people?

Jim Walsh, 23 Rock Crest Drive and former town councilor. The council needs to "apply leadership" as with the last two contentious issues – gun club and short term rentals.

Robert Cronin, 7 Avon Road asked if the council knows the consequences if the paper streets are deemed vacation. The rights of the neighbors with deeded rights may be in question.

Sheila Mayberry, 35 Trundy Road supports acceptance. More time is needed to discuss legal matters perhaps a facilitator or mediation would be effective for "productive problem solving."

Peter McCarthy, 2 Balsam Road said traffic and tourist control is needed in the Lighthouse Point area.

John Shumadine, Attorney for Andrew Somer and Susan Ross said deemed vacation is appropriate.

Adam Steinman, 49 Shipwreck Cove Road said the town needs to ensure shoreline access.

Collette Howe, 17 High View Road supports public access. Access to the shoreline has never been a problem until now.

Connie Pacillo, 3 Reef Road feels there is a rush to vote to vacate, more time is needed to be informed.

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Aaron Anker, 5 Algonquin Road advocates for peace, perhaps mediation will help to resolve the issues. Does not support a path in Shore Acres.

Kevin Justh, 9 Spruce Lane does not support vacation. What precedence would this set?

Priscilla Armstrong, 18 Avon Road supports maintaining the extension.

George Foley, 9 Pilot Point Road supports acceptance. Court has already upheld town access to the paper street.

Mary Costigan, Bernstein Shur, represents the Goldman's and agrees deemed vacation is an appropriate approach.

Greg Perry, 7 Katahdin Road worries about the safety of kids with cars driving fast through the neighborhood.

Florence Braff, 69 Hannaford Cove Road commented on the traffic and tourists near Lighthouse Point Road – "what do you expect when you live next to an historic monument."

Jeff Monroe, 11 Katahdin Road suggested bringing the groups together to find a resolution for all.

Chris McCarthy, 9 Salt Spray Lane said the greenbelt shouldn't be confused with a paper street.

Tim Thompson, 6 Pine Ridge Road said the issue doesn't need to be dealt with tonight.

Deborah Murphy, 24 Pilot Point Road encouraged the council to slow down as there are too many unanswered questions.

Lucas Homicz, 5 Ledgewood Lane said the worst option is to give away rights.

John Voltz, 33 Philip Road said access is precious and held in trust for the public.

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council for voting purposes separates Lighthouse Point Road from Atlantic Place and Surfside Avenue.

Moved by James M. Garvin and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council amends the motion for voting purposes to vote the three paper streets separately; Lighthouse Point Road, Surfside Avenue, Atlantic Place.

(5 yes) (2 no Councilors Ray and Sullivan)

Original Motion as Amended: (5 yes) (2 no Councilors Ray and Sullivan)

Moved by Patricia K. Grennon and Seconded by Caitlin R. Jordan

ORDERED, the Cape Elizabeth Town Council suspends the **Town Council Rules** to extend the meeting past 10:00 p.m.

(7 yes) (0 no)

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Moved by Penelope A. Jordan and Seconded by Patricia K. Grennon

ORDERED, the Cape Elizabeth Town Council maintains the extension as voted on October 5, 2016 and directs the town manager to provide options for facilitated discussions on alternative solutions for Surfside Avenue and report back to the town council.

Moved by Jessica L. Sullivan and Seconded by Katharine N. Ray

ORDERED, the Cape Elizabeth Town Council directs the town manager to work with the town attorney for a non-binding referendum to accept Surfside Avenue and to hold the referendum election either June 2018 or November 2018.

(2 yes) (5 no Chairman Garvin, Councilors Grennon, Caitlin Jordan, Penelope Jordan and Lennon)

Moved by Caitlin R. Jordan and Seconded by Patricia K. Grennon

ORDERED, Cape Elizabeth Town Council directs the town manager to provide information on a paid facilitator, for Surfside Avenue, and report back to the council at the December 11 meeting. The report by the facilitator is due back to the council by March 2018.

(7 yes) (0 no)

Original Motion as Amended: (7 yes) (0 no)

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council votes to hold the facilitated sessions for Surfside Avenue concurrently with Atlantic Place.

(7 yes) (0 no)

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council votes deemed vacation of Lighthouse Point Road, Map U15 Lot 001.

(2 yes) (5 no Chairman Garvin, Councilors Grennon, Penelope Jordan, Ray and Sullivan)

Moved by Caitlin R. Jordan and Seconded by Penelope A. Jordan

ORDERED, the Cape Elizabeth Town Council suspends the **Town Council Rules** to take up new items after 10:00 p.m.

(7 yes) (0 no)

Item #-138-2017 Recommendation to Change the Existing Delineation of the Off-Leash Area in Fort Williams Park

Moved by Caitlin R. Jordan and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council sets to public hearing on Monday, December 11, 2017 at 7:00 p.m. at the Cape Elizabeth Town Hall a recommendation of the ordinance committee, requested by the Fort Williams Park Committee, to change the existing delineation of the off-leash area in Fort Williams Park, Chapter 7 Dogs Section 7-1-7 Dogs to be Restrained on Municipal Property as presented.

(7 yes) (0 no)

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**Item #139-2017 Request by William H. Jordan Farm, LLC to Terminate Compost
Handling Agreement**

Moved by Caitlin R. Jordan and Seconded by Sara W. Lennon

ORDERED, the Cape Elizabeth Town Council approves the request of Penelope Jordan to recuse her from discussion and voting on this item as she is one of the applicants.

(6 yes) (0 no)

Councilor Caitlin Jordan disclosed she is a good friend and related to William H. Jordan Farm applicants. Chairman Garvin asked if there was concern about Councilor Jordan's participation; there was no objection.

Moved by Caitlin R. Jordan and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council accepts the request of the William H. Jordan Farm, LLC to terminate the compost handling agreement three years prior to the end of agreement, effective December 31, 2017.

(6 yes) (0 no) (1 recusal Councilor Penelope Jordan)

Citizens may at this point in the meeting raise any topic that is not on the agenda that pertains to Cape Elizabeth local government.

None

Adjournment

Moved by Caitlin R. Jordan and Seconded by Jessica L. Sullivan

ORDERED, the Cape Elizabeth Town Council adjourns at 12:10 a.m. (Tuesday)

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk

Attachment Item #136-2017 Revised Chapter 11 Health and Sanitation Ordinance Article 1 and Article IV

CHAPTER 11

HEALTH and SANITATION

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Article 1. 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, amend eff.12/6/2017.]

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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, other than live shellfish, raw vegetables or fruit 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, church, school, or other municipal kitchens, cafeteria and facilities, and all areas and facilities used in conjunction therewith.

(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 human being as well as a firm, a corporation, or an association.

(h) “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). 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”.

(i) “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) “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.

(k) “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.

(l) “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.

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 perishable food for shipment, which may include live shellfish, or raw meat, raw vegetables or raw fruits;

b. A retail vendor or food packager existing in the Town of Cape Elizabeth prior to December 6, 2017 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 state 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 December 6, 2017; 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. A federal, state or local government emergency when the immediate preservation of public health, safety or welfare requires the use of polystyrene foam.

Sec. 11-1-6. 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 are held invalid, the remainder of the ordinance including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable.

Article IV. Single Use Carryout Bags
[Adopted eff. December 6, 2017]]

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Sec. 11-4-1. Purpose.

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

Sec. 11-4-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

Sec. 11-4-4. Exemptions.

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

Sec. 11-4-5. Enforcement.

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

Sec. 11-4-6. Severability.

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

