

CHAPTER 11
HEALTH and SANITATION

Ordinance sections pertaining to polystyrene foam

Adopted effective December 6, 2017

*Text copied from https://www.capeelizabeth.com/government/rules_regs/ordinances/ch11.pdf, pp 1-3, 6-7, 10
guided by revision notations in
https://www.capeelizabeth.com/council_packets/2017/11-06-2017/Final Draft HlthSan Amdts 10-2-2017.pdf*

Article I. Food and Food Service Establishments.

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Sec. 11-1-2. Definitions.

(a) "Food" shall include all substance, used for food or drink, and all substances used as components of any article of food or drink, for human consumption.

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(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.

(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.

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Sec. 11-1-5. Requirements for Establishments.

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(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. 11-1-17. 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.

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Sec. 11-1-19. Applicability.

Wherever the requirements of this ordinance vary from those of any other lawfully adopted regulation, the more restrictive provision or that imposing the higher standards shall govern.

Sec. 11-1-20. Severability.

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