



Community Development Department
 271 Falmouth Road
 Falmouth, ME 04105
 (207)699.5303

Memorandum

Date: July 3, 2019
To: Town Council
From: Ethan Croce, Community Development Director
Re: Rate of Growth Ordinance – 3 Year Review

The Town of Falmouth adopted its rate of growth ordinance (often referred to as the “growth cap”) in 2000. The ordinance has been amended several times in the ensuing years and was amended most recently on July 11, 2016. The ordinance limits the number of development permits that may be issued in a calendar year for new single family, two-family, multi-family, and accessory dwellings. The ordinance, and its purpose, are described in Section 19-69 of the Town’s Zoning and Site Plan Review Ordinance.

History and Evolution of Falmouth’s Rate of Growth Ordinance

The following table provides a summary of the evolution of Falmouth’s rate of growth ordinance:

Year	Description
2000	Rate of growth ordinance adopted with cap of 100 single family dwellings with exemptions for congregate/retirement housing
2003	Cap for single family dwellings lowered to 65
2004	Caps added for detached accessory dwelling units (10 permits) and diverse housing units ¹ (35 permits)
2006	Cap of 65 permits added for two-family and multi-family units combined; Exemption added for affordable housing
2013	Clarified that upper story dwellings in the VC Districts are exempt from the cap
2016	Single family and two family dwellings placed under one combined cap of 65 units; Separate cap of 24 units created for multi family dwellings; Cap for accessory dwelling units broadened to include attached accessory dwelling units; Accessory dwelling unit cap changed to 20; Exemption added for housing for older persons; Differential cap enacted to place greater limitations on the number of permits issued in the Rural Residential Districts (Farm and Forest and Highland Lake Districts) at 26 single family and two family dwellings (combined) and eight accessory dwelling units.

¹ Diverse housing units were repealed as an allowed use from the ordinance in 2013

Requirements of State Law

State law requires that municipalities review their rate of growth ordinances at least once every three years to determine whether the ordinance is still necessary and whether it should be adjusted. State law imposes four specific requirements on municipalities which are articulated in Title 30-A §4360 and which require that:

1. The ordinance be consistent with Title 30-A §4314, subsection 3;
2. The ordinance sets the number of permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings during the previous 10 years;
3. The ordinance sets the number of permits for affordable housing at no less than 10% of the number of permits set in the ordinance in #3 above;
4. The number of permits allowed under the ordinance is recalculated every three years.

Falmouth's Compliance with State Requirements

Below, is an analysis documenting how Falmouth's existing ordinance is in compliance with each of the four statutory requirements referenced above:

1. *The ordinance must be consistent with Title 30-A §4314, subsection 3;*

This statutory provision requires a municipality's rate of growth ordinance to be consistent with a comprehensive plan adopted in accordance with Maine's Growth Management Act. Falmouth's Comprehensive Plan was found to be consistent with the Growth Management Act on 2/7/2014 by the State Department of Agriculture, Conservation & Forestry.

2. *The ordinance sets the number of permits for new residential dwellings, not including permits for affordable housing, at 105% or more of the mean number of permits issued for new residential dwellings during the previous 10 years*

Falmouth's current ordinance complies with this statutory provision by virtue of the fact that certain types of residential development are exempt from the growth cap.

3. *The ordinance sets the number of permits for affordable housing at no less than 10% of the number of permits set in the ordinance in #3 above;*

Falmouth's ordinance complies with this statutory provision by virtue of the fact that affordable housing units are exempt from the growth cap.

4. *The number of permits allowed under the ordinance is recalculated every three years*

This statutory provision does not require a municipality to amend its growth cap every three years, rather, it requires a municipality to perform a recalculation of building permit data every three years to establish the baseline figure for limiting development permits under item #2 above. Since Falmouth exempts different types of residential development from the growth cap, this recalculation is a formality. This recalculation would become more directly relevant if the Town ever began pursuing eliminating its exemptions from the growth cap.

Building permit data indicate that the Town issued 735 building permits for new residential dwellings for all housing types in the 10 year period between July 1, 2009 and June 30, 2019. Out of those permits, 53 permits were for affordable housing. This means that, if the Town were ever to eliminate its growth cap exemptions for certain types of residential dwellings, the Town could not restrict the issuance of building permits under category #2, above, to less than 68.2 units per year and could not restrict the issuance of building permits under category #3, above, to less than 6.82 units per year.

Summary

If the Council believes the Town's Rate of Growth Ordinance is still necessary and would like to retain the Ordinance (the alternative being a desire to repeal the Rate of Growth Ordinance) the Council's review of this item at the July 8, 2019 council meeting, as documented above, fulfills the strict technical requirements of state law. The question of whether or not the Rate of Growth Ordinance should continue to remain in its current form or be amended in some fashion is a policy decision that the Council may elect to take up at any point in the future.