PART II CODE OF ORDINANCES

CH. II-14 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

FOOTNOTE(S):
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Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; parks and community programs advisory committee, § 2-85 et seq.; planning board, § 2-95 et seq.; waterfront and harbor committee, § 2-115 et seq.; parks and community programs department, § 2-400 et seq.; public works department, § 2-460 et seq.; land subdivision, Ch. II-7; licenses, permits and business regulations, Ch. II-8; littering prohibited, § 12-2; junked and abandoned motor vehicles prohibited on public and private property, § 12-3; solid waste regulations, Ch. II-13; traffic and motor vehicles, Ch. II-17; stopping, standing and parking, § 17-80; parking restrictions at the town landing and requirements for permits for residents, § 17-94.

State Law reference— Highways, 23 M.R.S.A. § 1 et seq.; local highway law, 23 M.R.S.A. § 2701 et seq.

ART. II-14-2. STREETS

FOOTNOTE(S):
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Cross reference— Provisions for notices for nuisances, signs, dangerous, unsafe, dilapidated buildings, and any other action the expense of which may be collected from the property owner, § 2-3; public works department, § 2-460 et seq.; littering prohibited, § 12-2; stopping, standing and parking on streets and public places, § 17-80; extension of sewer system, § 18-230.

DIV. II-14-2-2. DEDICATION AND ACCEPTANCE


Notwithstanding the amendments to DIV. II-14-2-2 passed in Ordinance 122-2022 (effective May 9, 2022), applications for street acceptance submitted to the Town prior to May 9, 2022 shall be subject to the provisions of DIV. II-14-2-2 that were in effect on May 8, 2022 unless the applicant requests to have their application reviewed under the provisions of DIV. II-14-2-2 currently in effect. On or after January 1, 2023, all applications for street acceptance, including applications submitted to the Town prior to May 9, 2022, shall be reviewed under the provisions of DIV. II-14-2-2 currently in effect.

**Sec. 14-60. Accepted town streets.**

The official list of the streets of the town is on file in the town clerk's office.

The ownership and maintenance of a private way in the Town of Falmouth ("Town") is the responsibility of the owner. All requests for street acceptance shall be submitted to the Public Works Director, or their designee. The owner of a private way must submit a preliminary and final application to the Town of Falmouth proposing acceptance of the private way as a public street. Applications are reviewed by Town staff, the Town Attorney, and the Falmouth Town Council. Completion of the application requirements does not constitute acceptance by the Town Council. The Town Council has the sole discretion to grant or deny the application during its review of either the preliminary or final application.

(Ord. of 5-9-2022)

**Sec. 14-61. Purpose for acceptance of private ways.**

The town may accept title in fee for a private way to promote the public benefit, including, but not limited to, public safety and provision of town services. For the purposes of this division the terms private way and street shall be as defined in Sec. 14-40 of division II-14-2-1 of this chapter. Note: Street acceptance is a discretionary act of the Town Council and nothing grants an applicant any vested rights to street acceptance by the Council. Although the ordinance requires that certain items be completed to apply for street acceptance, satisfaction and/or completion of those items does not necessarily result in the street being accepted.

(Ord. of 5-9-2022)

**Sec. 14-62. Procedure.**

A. Preliminary Application

1. Prior to submitting a formal street acceptance application, applicants shall complete a preliminary application. The preliminary application shall be submitted to the Public Works Director or their designee and will be reviewed by Town staff for completion. The Director of Public Works, or their designee, shall determine if the application is complete within sixty (60) business days of receipt. If the application is determined incomplete, the Director of Public Works, or their designee, shall notify the applicant of the missing information. The Community Development Director, Director of Public Works, Police Chief, and Fire Chief or their designees shall review and provide comments within sixty (60) days of receipt of the determination of completeness. Reports shall address the criteria listed in Sec. 14-64.

2. Once all staff reports have been submitted and the preliminary application is deemed complete, the application may be submitted to the Town Council for a preliminary application review. The purpose of the preliminary application review is to:

   a. Allow the Town Council to evaluate the application for cost and public benefit including considering street connectivity standards per Sec. 14-64.10.

   b. Identify and consider changes that may have occurred from the original Planning Board approved plan
c. Identify and consider existing easements in place and proposed easements that may be required and determine that the easements are or will be unencumbered.

d. Identify and consider any street design standards that are not met and any waivers or variances that were granted by the Planning Board. The Town Council may waive street design standards at its discretion.

The Town Council may choose to take final action at the conclusion of the Preliminary Application process to reject the street acceptance or may choose to take interim action that indicates a preliminary position by the Town Council regarding the likelihood that the street will be accepted after the completion of and final review of a formal application, as described in paragraph B. Completion of the Preliminary Application or an interim position of the Town Council does not guarantee street acceptance by the Town Council. Instead, the application process may, or may not, continue with a formal application, as described in paragraph B. Continuation of the application process will in no way obligate any Town Council (current or future) to accept the street.

B. Formal Application

1. An application packet including an original application form if required by the Director of Public Works or their designee, and all required documents and items specified in Sec. 14-63 plus three (3) copies, shall be submitted to the Public Works Department. Applications may contain multiple streets within a development.

2. The Director of Public Works, or their designee, shall determine if the application is complete within sixty (60) business days of receipt.

3. If the application is determined incomplete, the Director of Public Works, or their designee, shall notify the applicant of the missing information. Applicants will have up to sixty (60) days to resubmit complete applications. If the missing information is submitted after the 60-day deadline but before 180 days, then the applicant shall pay the refile fee. If the application remains incomplete after 180 days, the application shall expire, and a new preliminary application submittal and preliminary application fee will be required. The Director of Public Works, or their designee, will have the authority to grant additional time for the applicant to resolve outstanding items at their discretion.

4. At such time as the Director of Public Works, or their designee, determines that the application is ready for consideration by the Town Council, the Town Manager shall request the application be placed on the next available Town Council agenda.

5. If the Town Council determines that the street is in order for acceptance, an order shall be scheduled at such time as the Director of Public Works, or their designee, determines that all documents noted in Sec. 14-63(11) are submitted and acceptable.

C. Application Fee and Escrow

1. Concurrent with the submission of any application, non-refundable application fees shall be paid in accordance with a fee schedule established by the Town Council. Said fees may be approved and amended from time to time by Council order.

2. Concurrent with the submission of a preliminary application the applicant shall submit escrow fees in accordance with a fee schedule established by the Town Council. Said fees may be approved and amended from time to time by Council order. The escrow fees shall be placed in an escrow account to be used to reimburse the Town for any and all legal service and/or third-party professional consulting services associated with the Town’s review of the application. If the Town expends the escrow fees prior to completing its review, the applicant shall replenish the escrow account to its original amount. Those monies deposited by the applicant and not spent during the Town’s review of the application shall be returned to the applicant with thirty (30) days after the Town Council renders its final decision on the application.
(Ord. of 5-9-2022)
Effective on: 5/9/2022

**Sec. 14-63. Application and documents required.**

A. Preliminary Application

1. The applicant must present to the Public Works Department the following documentation as part of the Preliminary Application review:

   a. A copy of the most recent approved sub-division plan or plan of private way;

   b. Documentation and location of all easements currently burdening or benefiting the road, and any easements that are proposed to be created in connection with street acceptance. These include, but may not be limited to, easements for storm drains and wastewater utilities located outside of the road right-of-way;

   c. Written explanation of how the application meets street connectivity;

   d. Written explanation on any street design standards that are not met, as specified in the Town of Falmouth Code of Ordinances;

   e. Proof of unencumbered fee simple title in the private way being proposed for acceptance. This is to be evidenced by an owner’s title insurance commitment, in an amount and form satisfactory to the Town in its sole discretion. If the street is accepted, the applicant will pay the cost of the owner’s title insurance policy in favor of the Town;

   f. Proof that all improvements and other requirements of the Planning Board have been satisfactorily completed and that all performance guarantees associated with those improvements have been released. The applicant shall provide certification that no changes have been made to the subdivision that would have required approval of an amended subdivision plan (i.e., lot division, creation of easements, etc.). If any changes have occurred from the latest Planning Board approved plan, the applicant shall provide documentation of such changes. These changes may include, but are not limited to, property line adjustments, drainage improvements, landscaping improvements, etc.;

   g. Proof that the private way has endured without damage at least two (2) consecutive annual freeze/thaw cycles after construction; and

   h. Proof by the verification by a qualified professional approved by the Public Works Department and compensated by the applicant that the street rights of way and any other property proposed to be conveyed in any manner to the Town has been free of invasive terrestrial plants as defined in Chapter 19-2 of this Code for a period of two years prior to the application filing. In the event that invasive terrestrial plans are present, the applicant shall provide proof to the Public Works Director, or their designee, that there have been appropriate eradication methods applied for a minimum of two growing seasons in a manner acceptable to the Public Works Director or their designee.

B. Formal Application

1. A plot plan showing the as-built condition of the private way drawn to a scale of forty (40) feet to one (1) inch or a scale acceptable to the Public Works Director and on one (1) or more sheets of paper not exceeding twenty-four (24) inches by thirty-six (36) inches in size. Subdivision plans approved by the Planning Board after May 30, 1984, may be considered acceptable for the above requirements, after being updated to reflect as-built conditions. The Town has the right to require
an additional updated as-built plan prior to Town Council order to accept the street. The plan(s) shall include at a minimum:

a. Magnetic and true north;

b. Bar and ratio scale;

c. Current ownership, name of way and subdivision, if any;

d. Date of Planning Board approval, revision dates and other pertinent information;

e. The location, frontage lengths and current ownership of all adjoining lots of land;

f. Right-of-way width(s);

g. Location of all easements currently burdening or benefiting the road, and any easements that are proposed to be created in connection with street acceptance, with necessary metes and bounds for location in the field and deed reference;

h. Location of all underground and overhead utilities, including sanitary sewer and building laterals, transformers, electrical service, telephone service, cable and fiber optic service, water mains, fire hydrants, utility poles and street lights;

i. Locations of boundary monuments including type;

j. Location, species and size of street trees;

k. Location and schedule of any street signs, including name, speed limit, and caution signs;

l. Edge of pavement, edge of shoulders, edge of sidewalks and edge of curbs;

m. Pavement markings;

n. Original and finished contours associated with the private way, both within and outside of the right-of-way;

o. Natural and manmade drainage courses with contours at not greater than two-foot intervals plus all existing storm drainage systems, including any laterals installed for connecting to building foundation and/or floor drains;

p. All angles, bearings curve data and radii necessary for the plotting of the streets and lots and their reproduction on the ground, including turning radii;

q. The relative location to the nearest public street or way, together with the stations of their sidelines;

r. Any private improvements which encroach within the right-of-way such as irrigation systems, fences, walls, etc.; and

s. Seal and signature of a Maine registered land surveyor or Maine professional engineer and certification that the plans reflect an "as-built" condition. The following Field Survey Certification Statement must be included on the as-built plans: I HEREBY CERTIFY THAT THE AS-BUILT CONDITIONS SHOW HEREON ARE AN ACCURATE AND COMPLETE REPRESENTATION OF WHAT WAS CONSTRUCTED AND THAT THE PHYSICAL DIMENSIONS OR ELEVATIONS SHOWN ARE THUS AS-BUILT CONDITIONS, AS SURVEYED IN THE FIELD UNDER MY DIRECTION ON (INSERT DATE). (AFFIX PROFESSIONAL SIGNATURE AND SEAL).

2. A profile of the proposed street drawn to a horizontal scale of forty (40) feet to one (1) inch and vertical scale of four (4) feet to one (1) inch. The profile shall show:

a. The profile of the centerline of the proposed street;

b. Centerline stationing;
c. Street grades at critical points;

d. Elevations of all underground utilities, drainage structures, including pipe sizes and materials, pipe slope and the location and inverts of all catch basins and manholes;

e. Complete curve data for all vertical curves; and

f. Seal and signature of a Maine professional engineer.

3. A cross section of the proposed street drawn to a horizontal scale of five (5) feet to one (1) inch and a vertical scale of one (1) foot to one (1) inch with the following details:

a. The location, size, materials and conditions of the existing and proposed water and/or sewer mains, storm drains, sanitary sewers, gas mains, culverts, underdrains;

b. The location of all underground and overhead utilities; and

c. Seal and signature of a Maine professional engineer.

4. Documentation on any deviations from the current street standards.

5. List of waivers granted by the Planning Board for street standards.

6. A digital copy of all plans and documents shall accompany the paper submission, one (1) file set in PDF format and one (1) in AutoCAD (dwg) format.

7. Proposed warranty deed describing the right-of-way, all necessary easements, and paper street connections to other properties. Deed shall reference any existing easements encumbering or benefiting the property being deeded.

8. Application fees as specified in the Land Use Permit Fee Schedule.

9. Copies of any documents listed as exceptions to the title insurance commitment or that otherwise contain restrictions or easements on the development, such as utility easements, declarations of covenants, and the like.

10. A description of all improvements within the right-of-way and explanation of public and private responsibilities for such improvements. If it is proposed that the Town assume these costs, historical costs of maintenance shall be provided. Ownership or maintenance responsibility for detention ponds and common space outside of the right-of-way shall not be transferred to the Town without specific approval of the Town Council. The request shall include a statement about the responsibility for:

a. Street lights and landscape lighting;

b. Fire hydrants;

c. Landscaping;

d. Signs;

e. Walls and fences; and

f. Copy of, and if applicable, transfer of, any Maine Department of Environmental Protection, Army Corps of Engineers or other stormwater, wetlands or similar permits. Any transfer of permits must be under conditions that the Town does not agree to maintenance obligations over and above those required by the Town's typical NPDES Phase 2 requirements.

11. Defect guarantee.

a. A defect guarantee shall be furnished prior to the order for acceptance by the Town Council to provide funds for a period of two (2) years from the date of acceptance for repair of any defects or conditions of the street that are determined by the Director of Public Works to be unsatisfactory to the Town. The guarantee shall be in an amount as indicated in the land use
fee schedule. This guarantee shall be in addition to and independent from any performance guarantee given to the Town in connection with any other matter.

b. The guarantee shall be tendered in the form of either a certified bank check made payable to the Town, or an irrevocable letter of credit in a form satisfactory to the Finance Director. All defect guarantees shall be drafted such that the Town shall receive written notice at least sixty (60) days prior to their expiration.

12. Documentation required prior to an order by the Council to accept the street. Prior to the Council scheduling an order to accept the street, the applicant shall produce the following:

a. An executed warranty deed with a metes and bounds description of the property being offered to the Town for acceptance as a street and as approved by the Town;

b. An electronic copy and one (1) paper copy of the plans of the street (rolled and not folded, and otherwise in recordable form), for recording at the Cumberland County Registry of Deeds;

c. Defect guarantee, amount as set by the Town Council;

d. Executed light pole agreement, if applicable;

e. Title insurance, with evidence of corporate authority to execute the deed, if the deed is being given by an entity rather than an individual; and

f. Any other item as required by the Town Council.

(Ord. of 5-9-2022)

Effective on: 5/9/2022

Sec. 14-64. Street design standards.

The Council may consider at least the following when reviewing private ways proposed for acceptance;

A. Conformance with the Town’s most recent comprehensive plan and policies as well as other adopted plans that address desired street patterns;

B. The land subdivision ordinance’s street construction and design objectives and standards which are currently in effect;

C. The street design approved by the Planning Board and any waivers that may have been granted;

D. The deviation between the current standard and the built condition;

E. E911 street addressing conformance;

F. Expenditures by the Town for upgrading or extending water and/or sewer mains, storm drains, sanitary sewers, gas mains, culverts, underdrains and all underground and overhead utilities;

G. Town liability for damage to private property such as, but not limited to, walks, fences, lawns and other items that encroach within the proposed right-of-way;

H. Budget impact regarding provision of adequate municipal services;

I. The current and future public benefit provided by street acceptance;

J. The impacts of street connectivity, including the following examples:
1. The ability to provide public service along and within the private way such as bussing, trash pick-up, emergency services, and plowing;

2. Reduction of costs to provide waste collection, snowplowing, public transit and school-related transit including decrease in travel time and mileage;

3. Shortening of emergency access response times and the provision of alternative routes;

4. Diffusion of traffic and reduction of traffic impacts, congestion in public roadways and intersections, and vehicle miles traveled;

5. Connectivity between residential and commercial developments;

6. Trail/open space, bicycle, and pedestrian connections;

7. Provision of bicycle and pedestrian recreation destination;

8. Facilitation of regional transportation connections;

9. Future connections to new developments; and

10. Constructability, financial burden, and legal considerations associated with proposed future connections.

K. Minimum thresholds required. Minimum thresholds required are:

1. For private ways serving residential development, certificates of occupancy have been issued for a minimum of sixty-five (65) percent of the approved units, with rounding to occur to the next highest whole number.

2. For streets in commercial developments, certificates of occupancy have been issued for a minimum of sixty-five (65) percent the number of lots or buildings whichever is greater, with rounding to occur to the next highest whole number.

(Ord. of 5-9-2022)

Sec. 14-65. Acceptance of streets and private ways required by the public interest.

Notwithstanding the provisions of any other section of this article, the Town may at any time lay out and accept any street or way in the Town as a public street whenever the public interest requires pursuant to authority granted under 23 M.R.S.A. § 3022 and 3023.

(Ord. of 5-9-2022)

FOOTNOTE(S):

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