



Memorandum

Date: April 15, 2021
To: Town Council
From: Ethan Croce, Community Development Director
Re: Rate of Growth Ordinance Background

Rate of growth ordinances (often referred to as “growth caps”) are ordinances that municipalities may adopt to limit the number of new building permits issuable over a specified time period. Municipalities adopt rate of growth ordinances principally to prevent surges in housing construction from occurring in any given year which, if such surges were left unchecked, could otherwise overwhelm or hinder a municipality’s ability to adequately plan for and provide necessary public facilities and services. The underlying legal and policy rationale for having a growth cap is valid whether a municipality never hits its growth cap, hits its growth cap late in a calendar year, or hits its growth cap early in a calendar year.

Falmouth adopted its rate of growth ordinance in the year 2000. Falmouth’s ordinance limits the number of permits that may be issued in a calendar year for new single family, two-family, multi-family, and accessory dwelling units. Falmouth’s ordinance also exempts certain types of housing (including affordable housing, congregate/retirement housing, and housing in the VC zoning districts) from the growth cap. The specific limits placed on each of the housing types regulated under the growth cap, and the different exemptions from the growth cap, are described in Section 19-69 of Falmouth’s Code of Ordinances.

History of Falmouth’s Rate of Growth Ordinance

Falmouth’s rate of growth ordinance was adopted in 2000 and was most recently amended in July 2016. Generally speaking, the amendments the Town has made to its ordinance over the years have, on the balance and as a practical matter, resulted in increasingly stricter limits. The following table provides a summary of the historical changes made to Falmouth’s rate of growth ordinance:

Year	Changes made to rate of growth ordinance
2000	Rate of growth ordinance adopted; Annual cap of 100 single family dwellings; Exemptions provided for congregate/retirement housing.
2003	Cap for single family dwellings lowered to 65/year.
2004	Additional caps added for detached accessory dwelling units (10 permits/year) and for diverse housing units ¹ (35 permits/year)
2006	Additional cap added for a combined category of two-family and multi-family units. (65 permits/year); Exemption added for affordable housing units.

2013	Exemption added for dwellings in the VC District. (Adopted concurrent with the adoption of VC Districts which allowed mixed-use zoning with residential along Route One)
2016	Single family and two-family dwellings placed under one combined cap of 65 units; Separate cap created for multi-family dwellings (24 units); Cap added for attached accessory dwelling units; Creation of combined cap of 20/year for both attached and detached accessory dwelling units; Exemption added for housing for older persons; Adoption of differential growth cap to place greater limitations on the number of permits issuable in the Rural Residential Districts. (Combined cap of 26/year for single family and two-family dwellings and cap of 8/year for accessory dwelling units.)

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

Calendar year 2020 Summary

In calendar year 2020, the Town temporarily hit its growth cap on October 28 for the single-family/two-family dwelling category. Shortly after that October 28 date, two previously-issued building permits were withdrawn by the permit recipient. This allowed the Town to issue two additional permits under the single-family/two-family category for calendar year 2020. The Town issued the second of those two additional permits on November 19.

Calendar year 2021 summary to-date

As of this writing, the Town had issued 57 of the 65 available permits available under the single-family/two-family category, but the Town had received 72 permit applications under the single-family/two-family category. Upon issuance of a 65th development permit under this dwelling unit category, the Town may not issue any additional permits for new housing in calendar year 2021 for this dwelling unit category until either calendar year 2022 or until such earlier time that development permits may become available. (This could occur, for instance, if permit holders withdraw their permits for calendar year 2021 as happened in calendar year 2020.)

Development Permits¹ Issued Calendar Years 2017 - 2021

Calendar Year	Single family	Two family	Cumulative single family and two-family (65/year cap)	Multi-family (24/year cap)	Accessory Dwelling (20/year cap)
2017	39	4	43	1	9
2018	41	24	65 ²	0	10
2019	27	24	51	0	14
2020	48	17	65 ³	0	8
2021 To-date	39 ⁴	18 ⁵	57 ⁶	0	5

¹ Permits issued for new housing subject to the growth cap

² Cap hit on 12/17/2018

³ Cap hit on 10/28/2020 and hit again on 11/19/2020

⁴ Six additional permits are pending and are expected to be issued in April 2021

⁵ Two additional permits are pending and are expected to be issued in April 2021

⁶ The Town has received 72 applications to-date for development permits in this category in 2021

Requirements of State Law

Municipalities have a certain degree of flexibility in how to tailor the specifics of their rate of growth ordinances. State law does, however, impose certain requirements on municipalities that must be followed in order for a rate of growth ordinance to be legally valid. Those requirements include the following:

1. Municipalities must review their ordinance at least once every three years to determine whether the ordinance is still necessary and whether it should be adjusted;
2. The ordinance must be consistent with a comprehensive plan adopted in accordance with Maine's Growth Management Act;
3. 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;
4. The ordinance sets the number of permits for affordable housing at no less than 10% of the number of permits set in #3 above;
5. The number of permits allowed under the ordinance is recalculated every three years.

Falmouth completed its most recent statutorily-required ordinance review in July 2019. At that time, the Council determined that the Town's rate of growth ordinance was still necessary and that no adjustments to the ordinance were required. By virtue of completing this review in 2019, Falmouth's rate of growth ordinance remains legally valid through July 2022, at which time the Town will be required to complete another triennial review of its ordinance per the statute.

Recent residential growth trends

Surrounding municipalities have generally reported experiencing increased residential growth pressures reflecting the strong housing market in Greater Portland. Some of these communities have recently approved residential developments on a scale much larger than Falmouth and have reported that it is not uncommon for larger developments to provide a sizeable percentage of the community's new housing stock.

Calendar year 2021 has been an anomaly for Falmouth, both in the speed with which the growth cap will be hit and in the speed with which individual developments have applied for permits. While Falmouth has approved several large subdivisions over the years since the Town's growth cap has been in place, those larger subdivisions have historically been built out at a moderate pace over a period of several years. With no large subdivisions currently in the Planning Board permitting process, there are no indications at this time that calendar year 2022 will be similar to calendar years 2020 and 2021 with respect to how quickly the growth cap will be hit. (The only new subdivision application currently under review by the Planning Board is a 13-lot single family subdivision being proposed near the intersection of Falls Road and Falmouth Road.) Having said that, it is always impossible to predict when new developments may be proposed and similarly impossible to predict how quickly property owners in any new development will apply for building permits.

Growth caps in surrounding municipalities

While several municipalities in Greater Portland have elected to adopt growth caps, many communities have chosen to forgo adopting growth caps. For municipalities that have adopted growth caps, the specifics of how their growth caps are tailored can vary. Without limitation, and without making judgments about the legality, or lack thereof, of the structure of growth caps enacted in other municipalities, some examples of growth cap provisions found in other communities include: assigning

incremental/proportional growth permit values to certain types of smaller housing units (e.g. smaller dwelling units only count as ½ a growth permit, etc.); allowing un-used growth permits from one calendar year to “roll-over” to a future calendar year; allowing the ability to “borrow” permits from a future calendar year’s permit allotment; capping the number of permits issuable annually to individual entities or to any given development; creating waiting lists for future calendar years.

Like many communities that have adopted growth caps, Falmouth issues its permits on a “first-come, first-served” basis. This is an easily-interpretable and administratively-efficient system that has seemingly served the Town well for the 21 years its growth cap has been in place. Undoubtedly, one of the reasons Falmouth’s growth cap has not been the subject of much criticism in the past 21 years is because Falmouth has never hit its growth cap so early in the calendar year and prospective applicants have never had to wait very long to receive their permits.

Below is a non-exhaustive sampling of certain surrounding communities’ growth caps as of mid to late March:

- Gorham, Freeport, Yarmouth, Westbrook, Portland, and South Portland do not have growth caps.
 - Gorham has averaged 83 single-family/two-family units/year over the last four years;
 - Freeport typically averages 50-55 units/year but expects that number to increase substantially due in part to new, larger housing complexes being developed.
- Scarborough has a cap of 135 units/year. Their growth cap was hit in January. They have a waiting list system with several dozen units on their waiting list.
- Windham has a cap of 100 units/year. They believe it likely that their cap will be hit around the middle of the calendar year. They limit based on developer/development.
- Cumberland has a cap of 65 units/year. When polled about the status of their growth cap in mid-late March, they had issued 35 permits. (Falmouth, by comparison, had issued 29 permits at the time of that March inquiry) Cumberland has a system where up to 10 un-used permits can be rolled over to be issued during the next calendar year, and a system that allows for up to 10 permits to be “borrowed/taken” from the next calendar year’s allotment.

As with many complex policy issues, there are multi-layered policy considerations, and potentially unintended consequences, that should be thoughtfully considered as part of any discussion around rate of growth ordinances.