Memorandum

Date:	January 23, 2025
To:	Town Council
From:	Ethan Croce, Community Development Director
Re:	Rate of Growth Ordinance – State Mandated Triennial Review

Rate of growth ordinances (sometimes referred to as "growth caps") are ordinances that municipalities may adopt to limit the number of building permits issued for new housing 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.

Falmouth adopted its first 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, and multi-family dwelling units. Falmouth's ordinance exempts certain types of housing (including affordable housing, congregate/retirement housing, and housing in the VC zoning districts) from being regulated under 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.

State law requires that municipalities review their rate of growth ordinances at least once every three years to determine whether the ordinance is still desired/necessary and to make sure that the ordinance still complies with certain State criteria. Falmouth completed its most recent State-required triennial ordinance review on 2/14/2022. At that time, the Council determined that it wanted to maintain the Town's rate of growth ordinance, that the ordinance was still in compliance with the statutory criteria, and that no adjustments to the ordinance were desired or required. By virtue of completing that triennial review in 2022, Falmouth's rate of growth ordinance remains legally valid through 2/14/2025.

History of Falmouth's Rate of Growth Ordinance

Falmouth's rate of growth ordinance has been amended several times since its adoption in the year 2000, and was most recently amended in December 2023. 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 from 100/year 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 the 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, and 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 non-growth areas. (FF and HL Districts - Combined cap of 26/year for single family and two-family dwellings and cap of 8/year for accessory dwelling units.)
2021	Allow up to 10 additional permits in excess of 65 to be issued in calendar year 2021 for single-family or two-family dwellings provided that the number of additional permits issued in excess of 65 are subtracted from the maximum allowed number of permits that may be issued for single-family or two-family dwellings in calendar year 2022.
2023	In accordance with new State law ("LD 2003"), accessory dwelling units are removed from the types of housing that can be regulated under the growth cap.

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

Summary of development permits issued for new housing under current growth cap structure

Table 1, below, shows the number of development permits issued over the past eight years (since the adoption of the current growth cap structure) for the different types of housing regulated by the growth cap.

TABLE 1
Permits issued under each of the regulated growth cap categories
(Calendar Years 2017 – 2024)

Calendar Year	Single family	Two family	Cumulative single family and two-family (65/year cap)[6]	Multi-family (24/year cap)	Accessory Dwelling (20/year cap)[7]	Total permits issued for new units regulated by the growth cap[4]
2017	39	4	43	1	9	53
2018	41	24	65[1]	0	10[8]	75
2019	27	24	51	0	14	65
2020	48	16	64[2]	0	10	74
2021	53	22	75[3]	4	10	89
2022	36	4	40	0	9	49
2023	23	8	31	0	14	45
2024	28	2	30	0	N/A[5]	30

[1] Cap reached on 12/17/2018

[2] Cap reached on 10/28/2020. Two previously-issued permits were subsequently withdrawn and one additional permit was issued in November

[3] Cap of 65 reached on 5/12/2021; August 2021 ordinance amendment allowed the issuance of up to 75 permits for calendar year 2021

[4] These totals do not include permits issued for new housing exempt from being regulated under the growth cap. Table 2, below, shows the total number of permits issued for all new housing units whether regulated by the growth cap or not.

[5] Beginning in calendar year 2024, State law prohibits municipalities from limiting the number of permits issued annually for accessory dwelling units. (10 new ADUs were permitted in 2024)

[6] No more than 26 permits may be issued in the Farm and Forest and Highland Lake Districts

[7] Prior to 2024, no more than 8 permits could be issued in the Farm and Forest and Highland Lake Districts

[8] Cap of 8 permits reached for permits in the Farm and Forest and Highland Lake Districts on 10/15/2018

Requirements of State Law

Municipalities have flexibility in how to tailor the specifics of their rate of growth ordinances. State law (MRS Title 30-A §4360) does, however, impose a few specific requirements on municipalities that must be adhered to in order for a rate of growth ordinance to be legally valid. Those requirements consist of the following:

1. Municipalities must review their rate of growth ordinance at least once every three years to recalculate the number of permits issued over the previous 10 years and 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. The mean is determined by adding together the total number of permits issued, excluding permits issued for affordable housing (and, since the adoption of "LD 2003", also excluding permits issued for accessory dwelling units), for new residential dwellings for the prior 10 years and then dividing by 10;
4. In addition to the permits allowed under #3, above, the ordinance sets the number of permits for affordable housing (80%AMI) at no less than 10% of the number of permits set in the ordinance pursuant to #3 above.

An analysis of total permit activity over the past 10 years, as shown in Table 2 below, indicates that the Town issued 748 permits for new residential dwellings during that timeframe. This means that the Town's growth cap must allow for the issuance of at least 66 permits/year under criterion #3 above.

- 748 total permits – 19 affordable housing permits = 729 permits
- 729 permits – 102 ADU permits = 627 permits
- 627 permits ÷ 10 years = 62.7
- 62.7 x 105% = 65.8 units (66 units)

Since Falmouth's growth cap currently allows for 89 permits/year to be issued (65 single family/two-family permits and 24 multi-family permits), and because 89 > 66, the Town's growth cap is in compliance with criterion #3 above. Additionally, Falmouth's growth cap complies with criterion #4, above, by virtue of the fact that Falmouth's growth cap exempts all affordable housing units from being regulated by the cap. Finally, Falmouth complies with criterion #2 above by virtue of the fact that Falmouth has received confirmation that its Comprehensive Plan was adopted in accordance with Maine's Growth Management Act.

TABLE 2
Permits issued for all new residential dwelling units
(Calendar Years 2015-2024)

2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Total
61	103	83[1]	89	71	74	90	49	88	40	748[2]

[1] Includes 19 units of affordable housing for Avesta/Blackstone project on Squidere Lane
[2] Includes 102 permits issued for accessory dwelling units

Summary

The documentation in this memo supports the Town being able to retain its rate of growth ordinance for an additional three years and remain in compliance with State law. If the Council would like to continue having its rate of growth ordinance, the Council should find that the ordinance is still necessary and that it continues to comply with the requirements of State law. The question of whether or not the ordinance should be amended in some manner at some point in the future is a policy decision that the Council may elect to take up at any point in the future. The Council is not limited to reviewing and/or amending the rate of growth ordinance only once every three years.

(Note: As the Council is aware, separate and distinct from this effort to perform the State-mandated triennial ordinance review, the CDC is currently reviewing the rate of growth ordinance in the context of the updated Comprehensive Plan which seeks to limit new development outside designated growth areas and direct growth to designated growth areas. If changes to the ordinance are proposed as a result of the CDC's review, those changes will ultimately need to be reviewed by the full Council.)