

Falmouth Code of Ordinances – Amendments to Chapter 14, Article II Streets, Division 2  
Dedication and Acceptance  
May 3, 2010

Proposed Ordinance – Complete Replacement	Current Ordinance
<p><b>Sec. 14-51 Accepted town streets.</b> The official list of the streets of the town is on file in the Town Clerk's Office.</p>	<p><b>Sec. 14-51. Accepted town streets and roads.</b> A list of the streets and roads of the town as of the effective date of the ordinance from which this section was derived is on file in the town clerk's office. (Ord. of 2-27-89, § 3)</p>
<p><b>Sec. 14-52 Purpose for Acceptance of Private Ways.</b> 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 Section 14-40 of Division 1 of this Chapter.</p>	<p>none</p>
<p><b>Sec. 14-53 Procedure.</b></p> <ol style="list-style-type: none"> <li>1. Prior to submittal of an application the following must be presented to the Parks and Public Works Department.               <ol style="list-style-type: none"> <li>a. Proof of right/title/interest in the street</li> <li>b. Proof of completion of any and all improvements as required by the Planning Board including the final release of any performance guarantee in place.</li> <li>c. Proof of duration of two consecutive freeze/thaw cycles following completion of street construction</li> </ol> </li> <li>2. An original application packet and four copies containing the following shall be submitted including an application form as prescribed by the Parks and Public Works Department. Applications may contain multiple streets within a development.               <ol style="list-style-type: none"> <li>a. all plans and written documentation,</li> <li>b. documentation of right, title and interest in the way</li> <li>c. electronic files of all submitted data, and</li> <li>d. the appropriate fees.</li> </ol> </li> <li>3. The Parks and Public Works Department shall determine if the application is complete within thirty (30) business days of receipt.</li> <li>4. If the application is determined incomplete the Department staff shall notify the applicant of the missing information. Upon receipt of a complete application, the Department shall forward the application to the Community Development Director, Police Chief, and Fire Chief.</li> <li>5. The Departments of Community Development, Police, and Fire shall submit a review of the application to the Director of Parks and Public Works within sixty (60) days of receipt of the application packet.</li> </ol>	<p>none</p>

<p>6. At such time as the Director of Parks and Public Works determines that the application is ready for consideration by the Council , the Director shall communicate with the Town Manager to make arrangements for the application to be placed on the Town Council agenda at the next available Council meeting.</p> <p>7. The Council shall schedule the request at the next regular meeting and review the request. If the Council determines that the street is in order for acceptance, an order shall be scheduled at such time as the Parks and Public Works Director determines that all documents noted in Section 14-58 are submitted and acceptable.</p> <p>8.</p>	
<p><b>Sec. 14-54 Street design standards.</b> The Council shall consider the following when reviewing private ways proposed for acceptance:</p> <ol style="list-style-type: none"> <li>1. the Land Subdivision Ordinance's street construction and design objectives and standards which are currently in effect,</li> <li>2. the street design approved by the Planning Board and any waivers that may have been granted,</li> <li>3. the deviation between the current standard and the built condition,</li> <li>4. the ability to provide public services along and within the private way such as school bussing, trash pick-up, emergency services and plowing, and</li> <li>5. E911 street addressing conformance.</li> <li>6. Street connectivity – Street connectivity may be required for streets not yet approved by the Planning Board as of May 23, 2005. The objectives for connectivity include increased access for public safety through two means of egress, neighborhood connectivity, future connections to new developments, reduction in costs of municipal services, trail and pedestrian connections and diffusion of traffic.</li> </ol>	<p><b>Sec. 14-52. Requirements for streets and ways accepted by the town.</b> Any private way proposed for acceptance by the town as a street must be designed and constructed in accordance with the street design standards contained in section 14-59. (Ord. of 2-27-89, § 4.1)</p> <p><b>Sec. 14-59. Street design standards.</b> Streets proposed for acceptance by the town shall be designed and built in accordance with the subdivision ordinance's street construction standards which are in effect at the time such street acceptance is proposed or in accordance with a subdivision design approved by the planning board after May 30, 1984. (Ord. of 2-27-89, § 7)</p>
<p><b>Sec. 14-55 Application required.</b></p> <ol style="list-style-type: none"> <li>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 Director of Parks and Public Works and be 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</li> </ol>	<p><b>Sec. 14-54. Application required, contents.</b> (a)An application for acceptance of the proposed street shall be submitted for approval to the town council upon a form to be prescribed by the director of parks and public works. The application shall be accompanied by a plan, profile and cross section of the proposed street as follows:</p>

<p>30, 1984 may be considered acceptable for the above requirements, after being updated to reflect as-built conditions. The plan(s) shall include at a minimum:</p> <ol style="list-style-type: none"> <li>a. magnetic and true north,</li> <li>b. bar and ratio scale,</li> <li>c. current ownership, name of street and subdivision, if any,</li> <li>d. date of Planning Board approval, revision dates and other pertinent information</li> <li>e. the location, frontage lengths and current ownership of all adjoining lots of land,</li> <li>f. right-of-way width(s),</li> <li>g. location of easements with necessary metes and bounds for location in the field and deed reference</li> <li>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 or street lights,</li> <li>i. locations of boundary monuments including type,</li> <li>j. location, species and size of street trees,</li> <li>k. location and schedule of any street signs, including name, speed limit, and caution signs,</li> <li>l. edge of pavement, edge of shoulders, edge of sidewalks and edge of curbs,</li> <li>m. pavement markings,</li> <li>n. original and finished contours associated with the private way, both within and outside of the right-of-way,</li> <li>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,</li> <li>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,</li> <li>q. the relative location to the nearest public street or way, together with the stations of their sidelines;</li> <li>r. any private improvements which encroach within the right-of-way such as irrigations systems, fences, walls, etc.</li> </ol>	<ol style="list-style-type: none"> <li>(1)A plot plan drawn to a scale of forty (40) feet to one (1) inch or a scale acceptable to the director of parks and public works and be on one (1) or more sheets of paper not exceeding twenty-four (24) inches by thirty-six (36) inches in size. The plan shall show the north point, the location and ownership of all adjoining lots of land, right-of-way widths, passageways, streetlights and electric lines, boundary monuments, waterways, topography and natural drainage courses with contour at not greater than two-foot intervals, all angles, bearings and radii necessary for the plotting of the streets and lots and their reproduction on the ground, the distance to the nearest established street or way, together with the stations of their sidelines;</li> <li>(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 the profile of the centerline of the proposed street and the grades thereof;</li> <li>(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;</li> <li>(4)The location, size, materials and conditions of the existing and proposed water and/or sewer mains, storm drains, sanitary sewers, gas mains, culverts, underdrains and the location of all underground and overhead utilities.</li> </ol> <p>(b)Plans submitted to and accepted by the planning board after May 30, 1984 for subdivision approval shall be considered acceptable for the above requirements, after being updated to reflect as-built conditions. (Ord. of 2-27-89, § 4.2(c))</p>
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- s. seal and signature of a Maine Registered Land Surveyor or Maine Professional Engineer and certification that the plans reflect an “as-built” condition.
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
  - 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,
  - c. seal and signature of a Maine Professional Engineer
4. Documentation on any deviations from the current street standards.
5. A digital copy of all plans and documents shall accompany the paper submission, one file set in PDF format and one in AutoCad (.dwg) format.
6. Proposed warranty deed describing the right-of-way, all necessary easements, and paper street connections to other properties. Deed shall note any existing easements encumbering the property being deeded.
7. Application fees as approved by the Town Council. Following fees to be placed in a fee schedule as separate amendment Application fee of \$500 plus \$0.50 per linear foot of street. An escrow account is required to be established with the submittal of the application in an amount determined by staff based on an estimate for inspections, testing, legal work, and recording fees. Any unused

portion of the escrow will be returned to the applicant at the end of the process or if the applicant withdraws the application.

8. Copies of any documents containing restrictions or easements on the development such as utility easements, declarations of covenants, and the like.
9. Public and private responsibilities for improvements within the right-of-way. 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
10. Copy of, and if applicable, transfer of, any Maine Department of Environmental Protection, Army Corps of Engineers or other storm water, wetlands or similar permits. Any transfer of permits will 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 as prior to the order for acceptance by the Town Council to provide the town 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 Parks and Public Works to be unsatisfactory to the town. The guarantee shall be in an amount as indicated in the Town Council Fee Schedule - five thousand dollars (\$5,000.00) plus five dollars (\$5.00) per linear foot of street. 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

**Sec. 14-58. Performance guarantee.**

- (a) No proposed street shall be accepted until the town has been furnished with a performance guarantee providing that the developer or other persons applying for acceptance of the street will be responsible 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 parks and public works to be unsatisfactory to the town and which arise out of failure of the developer or the applicants to design and construct the street to the specifications provided for in this article. The guarantee shall be in the amount of five thousand dollars (\$5,000.00) plus one dollar (\$1.00) per linear foot of street. This guarantee shall be in addition to and independent from any performance guarantee given to the town in connection with any sewers or subdivision.
- (b) A performance guarantee shall be tendered in the form of either a check payable to the town, a savings account passbook issued in the name of the town, an irrevocable letter of credit or a performance bond running to the town and issued by a surety company acceptable to the

<p>bank check made payable to the town, or an irrevocable letter of credit in a form satisfactory to the Finance Director. If a check is submitted the Town will enter into an escrow agreement with the account holder. All defect guarantees shall be drafted such that the town shall receive written notice at least sixty (60) days prior to their expiration.</p>	<p>finance director. The type of performance guarantee acceptable to the town shall be determined by the finance director or the town manager. All performance guarantees shall be in a form satisfactory to the finance director, except that all performance guarantees shall be drafted such that the town shall receive written notice at least sixty (60) days prior to their expiration.</p> <p>(c)The town council may waive the required performance guarantee under the following conditions:</p> <p>(1)The road to be accepted has been constructed and in place for a minimum of two (2) years;</p> <p>(2)The road has been properly maintained since the time of construction; and,</p> <p>(3)There are no known road defects at the time of proposed acceptance as determined by the town engineer. (Ord. of 2-27-89, § 6.2; Ord. of 1-25-93)</p>
<p><b>Sec. 14-56 Review by Town Staff</b> Town staff as noted in Section 14-53 above shall provide a written report to the Director of Parks and Public Works on the proposed street. The Parks and Public Works Department may require data from test borings or other methods to ensure adequacy of construction. Cost of such testing shall be borne by the applicant. Reports shall include information on how the private way meets the standards in this article and information relative to:</p> <ol style="list-style-type: none"> <li>1. conformance with the Town's comprehensive plan as well as other adopted plans that address desired street patterns;</li> <li>2. budget impact regarding provision of adequate municipal services</li> <li>3. 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;</li> <li>4. 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.</li> <li>5. any concerns for providing public safety and access to the street and its occupants.</li> </ol>	<p><b>Sec. 14-55. Report by town personnel.</b> The parks and public works director and the town planner shall give written reports to the town council on the proposed street which shall include information on how the street meets the standards in this article and information on whether the street's acceptance:</p> <ol style="list-style-type: none"> <li>(1)Is in conformance with the town's comprehensive plan as well as other adopted plans that address desired street patterns and connectivity;</li> <li>(2)Will cause an undue burden on the ability of the town to provide adequate municipal services;</li> <li>(3)Will require 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;</li> <li>(4)Will result in town liability for damage to private property such as, but not limited to, walks, fences, lawns and other items that encroach on the proposed street way.</li> </ol> <p>(Ord. of 2-27-89, § 4.3)</p>
<p><b>Sec. 14-57 Minimum thresholds required.</b> No proposed street may be accepted unless the Town Council finds, after a review of the information provided under section 14-55, that acceptance is</p>	<p><b>Sec. 14-56. Findings required.</b> No proposed street may be accepted unless the town council finds, after a review of the information provided under section 14-55, that</p>

<p>in the public interest and:</p> <ol style="list-style-type: none"> <li>1. For private ways serving residential development, Certificates of Occupancy have been issued for a minimum of sixty-five percent (65%) of the approved units, with rounding to occur to the next highest whole number.</li> <li>2. For streets in commercial developments, Certificates of Occupancy have been issued for a minimum of sixty-five percent (65%) the number of lots, with rounding to occur to the next highest whole number.</li> </ol>	<p>acceptance is in the public interest and:</p> <ol style="list-style-type: none"> <li>(1)For streets in residential developments, until certificates of occupancy have been issued for at least twenty (20) percent of the housing units or two (2) housing units, whichever number is greater;</li> <li>(2)For streets in commercial developments, that certificates of occupancy have been issued for commercial space square footage equal to the length of the street under consideration for acceptance times ten (10). In making this determination, the street length will be calculated as defined in the town's Subdivision Ordinance. Square footage of occupied space shall be calculated using gross floor area exclusive of cellar and bulk storage area. Gross floor area shall be defined as the sum, in square feet, of the total floor area of a building, as measured from the interior faces of the outside walls. (Ord. of 2-27-89, § 4.4; Ord. of 1-25-93)</li> </ol>
<p><b>Sec. 14-58 Documentation required prior to an order by the Council to accept the street.</b></p> <p>Prior to the Council scheduling an order to accept the street, the applicant shall produce the following documents as required:</p> <ol style="list-style-type: none"> <li>1. 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.</li> <li>2. Recordable mylars and one paper copy of the plans of the street for recording at the Cumberland County Registry of Deeds.</li> <li>3. Defect guarantee, amount as set by the Council.</li> <li>4. Title insurance.</li> </ol>	<p><b>Sec. 14-53. Conditions for acceptance.</b></p> <p>A private way shall be considered for acceptance as a street by the town council only upon the following conditions:</p> <ol style="list-style-type: none"> <li>(1)The owner shall give the town a warrantee deed with a metes and bounds description of the property being offered to the town for acceptance as a street;</li> <li>(2)A plan of the street shall be recorded at the county registry of deeds within thirty (30) days of its acceptance and at the expense of the person proposing the street. (Ord. of 2-27-89, § 4.2(a), (b))</li> </ol>
<p><b>Sec. 14-59. Acceptance of streets and private ways required by the public interest.</b></p> <p>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.</p>	<p><b>Sec. 14-57. Acceptance of streets and ways required by the public interest.</b></p> <p>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 2-27-89, § 5)</p>