

**CITY OF GRANITE FALLS
Granite Falls, Washington**

ORDINANCE 964-2019

AN ORDINANCE OF THE CITY OF GRANITE FALLS, WASHINGTON, ADOPTING A SECOND EXTENSION OF INTERIM REGULATIONS AND MORATORIA WITHIN THE CITY AS PREVIOUSLY ESTABLISHED IN ORDINANCE 945-2018 RELATED TO CONCURRENCY AND SEWER CONNECTIONS AND EXTENDING THE CURRENT WORK PROGRAM; AND EXTENDED BY ORDINANCE 957-2018; PROVIDING THAT THE EXTENDED INTERIM REGULATIONS AND MORATORIA WILL EXPIRE SIX (6) MONTHS FROM THE DATE OF ADOPTION; AND PROVIDING FOR SEVERABILITY

WHEREAS, the City's sewer system has capacity limitations while the City is experiencing an unprecedented amount of residential development and some commercial development;

WHEREAS, the estimated number of remaining sewer connections available in the City may not exceed 100 as of the date of this Ordinance, and pre-applications have occurred which if submitted and a concurrency determination is made will eliminate any remaining capacity;

WHEREAS, the City engineer has preliminarily reported on a study to determine remaining capacity, and a General Sewer Plan update has been completed;

WHEREAS, the City intends to add to its 2019 Comprehensive Plan and Development Regulation docket consideration of adoption of a revised General Sewer Plan, amendments to the Capital Facilities element of the City's Comprehensive Plan, and final amendments to its concurrency provisions in GFMC 19.04.090;

WHEREAS, the City needs to insure that some sewer connections remain to address hardships;

WHEREAS, commercial development is important to the City and may provide critical tax revenues;

WHEREAS, the City needs to insure that some sewer connections remain for commercial development with the City;

WHEREAS, if the City's waste water treatment plant is at full capacity there is a risk of adverse impacts and consequences to public health, safety, welfare and property within the City;

WHEREAS, both federal and state law recognize that local governments have broad police powers to impose measures addressing local issues where the measure "promotes public safety, health or welfare and bears a reasonable and substantial relationship to accomplishing the purpose

pursued” and the measure does not conflict with the general law of the State (quoting *Weden v. San Juan County*, 135 Wn.2d 678, 700 (1998));

WHEREAS, Washington law recognizes that imposition of development moratoria and interim regulation is within the police power granted to local governments under article XI, section 11 of the Washington State Constitution (“While no positive grant of authority exists under the SMA to impose a moratorium, such an explicit grant is not required in the face of Washington Constitution article XI, section 11’s broad delegation of police power to the local governments.” *Biggers v. City of Bainbridge Island*, 162 Wn.2d 683, 704 (2007) (Opinion of Justice Chambers “concurring in result”), and Washington courts have historically upheld moratoria on a variety of grounds (see, e.g.: *Jablinske v. Snohomish County*, 28 Wash.App. 848, 626 P.2d 543 (Div. 1 1981), *Matson v. Clark County Bd. of Com'rs*, 79 Wash. App. 641, 647-48, 904 P.2d 317, 320 (Div. 2 1995), and *Ord v. Kitsap County*, 84 Wash. App. 602, 929 P.2d 1172 (Div. 2 1997));

WHEREAS, Federal law precedent recognizes that imposition of development moratoria or interim regulation is within the broad police power granted to local governments, and that such regulation or moratoria are important and useful tools to manage land development and growth, and to allow time for thoughtful and proper planning, as well as to deal with emergent and unforeseen situations (“moratoria, or ‘interim development controls’ as they are often called, are an essential tool of successful development,” *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002), and temporary planning moratoria provide local governments with “an important land-use planning tool with a well-established tradition,” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 216 F.3d 764, 777 (9th Cir. 2000));

WHEREAS, the State Legislature has expressly authorized cities like the City of Granite Falls to adopt interim regulations or a moratorium for up six months, which can be renewed, for up to one year pursuant to a work plan, pursuant to RCW 35.63.200 (the State Planning Enabling Act), RCW 35A.63.220 (authorizing non-charter code cities to enact interim regulation or moratoria), and RCW 36.70A.390 (authorizing interim regulation or moratoria as part of the GMA);

WHEREAS, and additionally, under RCW 35A.11.020 and RCW 35A.21.160 code cities such as the City of Granite Falls have all the powers which any city or any class may have consistent with the state constitution and not specifically denied to code cities by law;

WHEREAS, due to the above-described circumstances, it is requested that the City Council declare that a public emergency exists and that a six (6) month moratorium be extended regarding the filing and processing of applications for certain development activities within the City limits in order to ensure that the sewer system capacity within the City is not exceeded which could result in significant adverse impacts and consequences to public health, safety, welfare and property;

WHEREAS, due to the above-described circumstances, it is further requested that interim regulation, and a six (6) month moratorium be imposed and extended with regard to the connection to the City’s sewer system with exceptions in order to ensure that the sewer system capacity within the City is not exceeded which would result in significant adverse impacts and consequences to public health, safety, welfare and property;

WHEREAS, existing City Code does not require the City to make a final concurrency determination until issuance of a building permit under GFMC 19.04.090(D)(1)(a);

WHEREAS, the City recognizes that large amounts of money can be spent in the development process long before application for a building permit is made;

WHEREAS, the Granite Falls City Council passed Ordinance 945-2018 establishing interim changes to Section 19.04.090 Granite Falls Municipal Code and imposing a moratoria on certain development and receipt of applications for development;

WHEREAS, the Granite Falls City Council passed Ordinance 957-2018 extending the interim regulations and the moratoria previously established by Ordinance 945-2018;

WHEREAS, the City Council conducted a public hearing on the second extension of the interim regulations and the moratorium on April 3, 2019;

WHEREAS there remains demand for further development in the City for uses in addition to those permitted by the interim regulations, and such development would exhaust and exceed the remaining capacity the City has for sewer connection;

WHEREAS the City Council held a public hearing on October 3, 2018 to consider whether to extend the interim regulations and the moratoria;

WHEREAS, the City Council finds that it is in the interest of the public health, safety, welfare and economic viability of the City of Granite Falls to again extend the interim regulations and to extend and impose a further six (6) month moratorium on the filing and processing of applications for certain development activities within the City limits with exceptions and to presently limit further connections to the City sewer system within the City in order to ensure that the sewer system capacity within the Area is not exceeded, and further finds an emergency justifying immediate adoption of the interim regulation and moratorium without prior notice.

NOW THEREFORE, the City Council of the City of Granite Falls, Washington do ordain as follows:

Section 1. Preliminary Findings.

The recitals and findings set forth above are hereby adopted as the City Council findings in support of the interim regulations and moratoria extended by this ordinance in compliance with RCW 36.70A.390 and RCW 35A.63.220.

Section 2. Interim Regulations

The interim regulations adopted in Ordinance 945-2018 and extended by Ordinance 957-2018 amending GFMC Sections 19.04.090 as set out in Attachment A hereto are hereby readopted and

extended for second six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same is extended by the City as provided in State law or unless terminated sooner by ordinance.

Section 2. Moratoria Imposed.

Pursuant to Washington State law, the moratoria established by Ordinance 945-2018 and extended by Ordinance 957-2018 relating to when concurrency determinations may be made, and that prohibits within the City of Granite Falls certain development actions and application are hereby extended for six(6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same are extended again by the City as provided in State law or unless terminated sooner by ordinance. The moratoria are:

a. Subject to the exemptions provided in amended GFMC 19.04.090 as set out in Attachment A to this ordinance and the variance process adopted in amended GFMC 19.04.090, the moratorium established by Ordinance 945-2018 is hereby established and extended, effective immediately upon the adoption of this Ordinance, continuing the prohibition on the receipt and processing by the City of new applications for the following development activities within the City of Granite Falls:

- a. Short plats;
- b. Subdivisions;
- c. Planned residential developments;
- d. Administrative development plans;
- e. Shoreline permits, including but not limited to shoreline substantial development permits and shoreline conditional use permits;
- f. Building permits for nonexempt commercial buildings, industrial buildings, multi-family residential buildings, single-family residential buildings and/or accessory uses thereto and any other building or structure;
- g. Conditional use, special use or unclassified use permits;
- h. Annexations, except those for municipal purposes;
- i. Rezones, except those initiated by the City and those associated with comprehensive plan amendments; and
- j. Any other development activities not exempt under GFMC 19.04.090 that would result in increased sewer usage and/or increased demands on the sewer system within the City.

b. Subject to the exemptions provided in amended 19.04.090 as set out in Attachment A to this ordinance and the variance process adopted in amended Section 19.04.090, the moratorium established by Ordinance 945-2018 is hereby established and extended again, effective immediately upon the adoption of this Ordinance, continuing the prohibition on any affirmative concurrency determinations and any further connections to the City sewer system for development activities that are not exempt under GFMC 19.04.090.

Section 4. Effective Period for Moratorium.

The moratoria forth in this ordinance and extended shall be in effect for a period of six (6) months from the date this ordinance is passed and shall automatically expire at the conclusion of that six (6) month period unless the same is extended by the City as provided in State law or unless terminated sooner by ordinance.

Section 5. Work Program.

The City Council will continue to study and address issues related to capacity at its Waste Water Treatment Plant to develop actions to increase capacity consistent with the City's Comprehensive Plan.

Section 6. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 7. Effective Date.


This Ordinance shall become effective immediately upon passage as a public emergency ordinance.

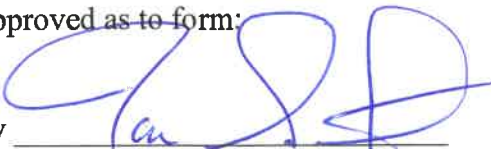
ADOPTED by the City Council and **APPROVED** by the Mayor this 3rd day of April, 2019.

CITY OF GRANITE FALLS

By 
Matthew Hartman, Mayor

ATTEST:

By 
Darla Reese, City Clerk

Approved as to form:
By 
Thom Graafstra, City Attorney

Date of Publication: April 6, 2019

Effective Date: April 11, 2019

ATTACHMENT A

19.04.090 Concurrency and adequacy.

(A) Intent. The purpose of this section is to ensure that public facilities and services owned, operated, or provided by the city and public facilities and services owned, operated or provided by other governments, special districts and applicable organizations within the city are provided simultaneous to or within six years after development occurs consistent with, available capacity, the capital facilities element of the comprehensive plan and RCW 36.70A.070(6)(e). This chapter shall apply to all applications for development or redevelopment permit approvals that will result in:

- (1) More than 10 new p.m. peak hour vehicle trips; and
- (2) ~~Five or more connections or five~~ Two or more connections or two SFR equivalent connections to city water and/or sanitary sewer systems.

(B) Authority. The designated official shall be responsible for enforcing the provisions of this chapter.

(C) Exemptions. The test for concurrency shall not be required for exempted developments as specified below:

(1) Highways of statewide significance (HSS) are exempt from this concurrency section.

(2) No Impact. Development which creates little or no additional impacts on public water, sanitary sewer, surface water management, streets, schools and parks are exempt from the test for concurrency. Such development includes but is not limited to:

~~(a) Uses falling under thresholds described in GFMC 19.07.010(H);~~

~~(b)~~ (a) Additions, accessory structures, or interior renovations to or replacement of a residence which do not result in a change in use or increase in the number of dwelling units or residential equivalents;

~~(c)~~ (b) Additions to or replacement of a nonresidential structure which do not result in a change in use, expansion in use, or otherwise increase demand in public facilities as defined above;

~~(d)~~ (c) Temporary uses as described in GFMC 19.05.060; and

~~(e)~~ (d) Demolitions.

(e) Commercial development in the General Commercial zone subject to available capacity at time of complete application submittal.;

(f) Construction of a single family residence or a duplex on an existing lot

(3) Variances as provided elsewhere in this section.

~~(3)~~(4) Permits and Actions. The following are exempt from the test for or a new test for concurrency:

- (a) Boundary line adjustments;
- (b) Temporary use permits;
- (c) Variances and shoreline variances;
- (d) Approvals pursuant to site development regulations;
- (e) Administrative interpretations;
- (f) Sign permits;
- (g) Street vacations;
- (h) Demolition permits;
- (i) Street use or right-of-way permits;
- (j) Clearing, grading, and excavation permits;
- (k) Mechanical, electrical and plumbing permits;
- (l) Fire code permits;
- (m) Other permits as determined by the city that will not result in impacts on public services or utilities.
- (n) Permits or applications for which the City has contractually committed to sewer availability, including but not limited to approved preliminary subdivisions, short plats or binding site plans as of the date of this Ordinance;
- (o) New sewer service to properties that paid assessments as part of local improvement districts established prior to the effective date of this Ordinance for the purpose of providing sewer;
- (p) All projects (if any) that have vested rights to new sewer connections because of previously submitted and fully complete applications with prior affirmative city issued concurrency determinations;
- (q) New sewer connection in cases where the property owner has presented the City with documentation from the Snohomish Health District that sufficiently demonstrates a failed on-site septic system and that there is no feasible alternative but to connect to the public sewer system;

(r) The Snohomish Health District or the State Department of Ecology authorizes temporary use of an on-site sewer system, the Applicant pays sewer connection fees at the time of building permitting, and the Applicant signs and records a covenant agreeing to connect to the City of Granite Falls sewer system and decommission the on-site system within 60 days of receiving a request from the City

~~(4)~~~~(5)~~ SEPA. Applications exempt from the test for concurrency are not necessarily exempt from SEPA.

~~(5)~~~~(6)~~ Exemptions. The portion of any development used for any of the following purposes is exempt from the requirements of this chapter:

- (a) Public transportation facilities;
- (b) Public parks and recreational facilities; and
- (c) Public libraries.

(D) Concurrency Procedures.

(1) Concurrency Review Procedures. The test for concurrency is currently suspended for six months from April 3, 2019 but when resumed shall be performed in the processing of all nonexempt permit applications through a concurrency review process established by the individual service providers.

- (a) The concurrency review process shall be completed prior to issuance of a building permit. The designated official shall determine the time of the concurrency test dependent on the time of permit.
- (b) The concurrency review process shall include review of phased projects.
- (c) The concurrency review process established by the individual service providers shall be specified in written policy, and shall be available for city distribution.

(2) Test for Concurrency – Roles.

(a) When allowed, the designated official shall provide the overall coordination of the test for concurrency by:

- (i) Notifying the service providers of all applications requiring a test for concurrency;
- (ii) Notifying the service providers of all exempted development applications which use capacity;
- (iii) Notifying the service providers of expired development permits or other actions resulting in a release of capacity reserved through a certificate of capacity.

(b) Service providers shall:

- (i) Be responsible for conducting the test for concurrency for their individual public facilities, for all applications requiring a test for concurrency;
- (ii) Reserve the capacity needed for each application;
- (iii) Account for the capacity for each exempted application which uses capacity;
- (iv) Adjust capacity to reflect the release of reserved capacity as notified by the city;
- (v) Annually report the capacity of their public facilities to the city. Said annual report shall include an analysis of comprehensive plan infrastructure priorities in accordance with the six-year capital improvement plan; and
- (vi) Have the authority to charge applicable fees to recover the costs of concurrency testing and monitoring their concurrency systems.

(3) Capacity. For sanitary sewer and domestic water supply, only available capacity shall be used in conducting the test for concurrency. For streets, available and planned capacity may be used in conducting the test for concurrency. The adopted level of service standards outlined in the comprehensive plan shall be the basis for determining whether adequate capacity will be available.

(4) Test for Concurrency – Pass. The test for concurrency, when allowed to occur, is passed when the capacity of public facilities and services is equal to or greater than the capacity required to maintain the level of service standards established by the city. When a concurrency determination is allowed, a certificate of capacity will be issued by the city according to the following provisions:

- (a) A certificate of capacity will be issued upon payment of any fee, performance of any condition, or other assurances required by the service provider.
- (b) A certificate of capacity shall apply only to the specific land use types, densities, intensities, and development project described in the certificate.
- (c) A certificate of capacity is not transferable to other land, but may be transferred to new owners of the subject land along with any conditions imposed by the city in the permit or approval documents.
- (d) A certificate of capacity shall expire if the accompanying permit expires or is revoked. The expiration date of the certificate of capacity may be extended according to the same terms and conditions as the accompanying permit. If the permit is granted an extension, so shall the certificate of capacity. If the accompanying permit does not include an expiration date, the certificate of capacity shall expire two years from the date of issuance. Expiration dates shall be included in certificates of capacity.

(5) Test for Concurrency – Fail. The test for concurrency is not passed and the proposed project may be denied if the capacity of the public services or facilities is less than the

capacity required to maintain the adopted level of service standards after the impacts associated with the requested permit are added to the existing capacity utilization. The following options are available to applicants in the event that partial capacity of public facilities and services is available:

- (a) The scope of the project may be reduced to the level equal to that which would absorb the available capacity;
- (b) The phasing of the project may be modified to accommodate planned capacity improvements;
- (c) The capacity shortfall may be mitigated as part of the project; or
- (d) The results of the test for concurrency may be appealed to the hearing officer.

(E) Check for Adequacy. The check for adequacy will be performed on an annual basis concurrent with the annual update of the capital facilities element of the comprehensive plan. The check for adequacy will be conducted by the appropriate service provider.

(1) City. The city shall:

- (a) Provide the affected service providers a report on all permit applications occurring within the past year;
- (b) Provide population growth figures to the service providers;
- (c) Maintain a cumulative record of all checks for adequacy.

(2) Service Providers. Service providers shall provide annual reports on checks for adequacy to the city.

(F) Approval or Denial of Permits.

(1) Approvals. When allowed, permits which would not result in a reduction of an adopted level of service standard for a public facility or service may be approved as long as all other provisions of the code are met.

(2) Denials. Permits which would result in a reduction of an adopted level of service standard for a public facility or service are subject to denial.

(G) Concurrency Test Request without Application. At this time no test for concurrency may be requested without an accompanying permit application.

(H) Variance. Notwithstanding any other provision of this Section 19.04.090, The City Engineer shall have authority to administratively grant a variance from the prohibition on a concurrency determination in this section in cases of special hardships, unique circumstances and practical difficulties not covered by an exemption in this section. Application for such a variance shall be in writing, state the basis for the request, and shall be filed with the City Engineer together with a

filing fee as established by resolution of the City Council. No variance shall be granted unless the City Engineer finds that all of the following facts and conditions exist:

(1) That there are exceptional or extraordinary circumstances such as a bona fide public health emergency or conditions applying to the subject property or as to the intended use thereof that do not apply generally to other properties in the same vicinity;

(2) That such variance is necessary for the preservation and enjoyment of a substantial property right of the applicant possessed by the owners of other properties in the same vicinity;

(3) That the authorization of such variance will not be materially detrimental to the public interest, welfare or the environment;

(4) That the granting of such variance will not be inconsistent with the long-range plans of the City utility system;

(5) That the granting of such variance is consistent with the Growth Management Act, Chapter 36.70A RCW;

(6) For purposes of this chapter the term “bona fide public health emergency” shall mean that service is necessary and that all of the following are present:

(a) The impact on public health potentially impacts the general public rather than solely the property owner making application;

(b) The hardship is not the result of the applicant’s own action;

(c) The hardship is not merely financial or pecuniary;

(d) The City’s NPDES permit will not be affected by the extension (if applicable);

(e) The extension is consistent with the goals of the City’s sewer comprehensive plans and all other applicable law, including, but not limited to, the Growth Management Act and the State Environmental Policy Act;

(f) The City has adequate capacity and adequate infrastructure available to provide the required service, or the applicant voluntarily agrees to provide the necessary infrastructure upgrades to allow service consistent with City standards.

(7) Conditions may be imposed upon the granting of a variance to ensure the protection of the public health, welfare and environment. Each variance shall be considered on a case-by-case basis, and shall not be construed as setting precedent for or binding on any subsequent application. The decision of the City Engineer on a variance application shall be in writing, deemed a Type 2 decision and shall be final, subject to appeal to the City Land Use Hearing Examiner pursuant to the appeal process set forth in GFMC 19.04.030,

including but not limited to filing any appeal within the 10-day period after the written decision of the City Engineer.