

**CITY OF GRANITE FALLS,
WASHINGTON**

ORDINANCE NO. 992-2020

AN INTERIM ORDINANCE OF THE CITY OF GRANITE FALLS, WASHINGTON, ADOPTING A SIX-MONTH MORATORIUM ON FILING WITH AND PROCESSING BY THE CITY OF APPLICATIONS FOR DEVELOPMENT ACTIVITIES REQUIRING CONNECTION TO THE CITY'S SEWER SYSTEM AND AMENDING GFMC 19.04.090 RESTRICTING CONCURRENCY DETERMINATIONS AND SEWER CONNECTIONS WITHIN THE CITY FOR A MINIMUM OF SIX MONTHS, WITH EXCEPTIONS; DECLARING AN EMERGENCY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

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;

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 this 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, or 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 imposed 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 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, by Ordinance 945-2018 interim regulations and moratoria to address the City's limited wastewater capacity;

WHEREAS, the 2018 interim regulations and moratoria were extended by Ordinances 957-2018, 964-2019, 971-2019 and 984-2020;

WHEREAS, a state of emergency has been in effect in the State of Washington since March 2020 to deal with the corona virus (COVID 19);

WHEREAS, improvements to the City's wastewater plant but capacity has not been increased;

WHEREAS, the COVID 19 emergency has put increased demands on Federal, State and local government resources and capacity improvements at the Wastewater plant will not occur anytime soon;

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 adopt interim regulation and impose a 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. Purpose. The purpose of this interim regulation and moratorium is to temporarily suspend additional demands on the capacity of the sewer system in the City and to withhold certain concurrency determinations finding capacity except as allowed in this Ordinance.

Section 2. Findings of Fact. The above "Whereas" clauses constitute findings of fact in support of the interim regulation and moratorium established by this Ordinance and said findings are fully incorporated into this Ordinance.

Section 3. Public Hearing. A public hearing concerning this Ordinance and the interim regulation and moratorium imposed by this Ordinance is set for December 2, 2020.

Section 4. Amendment to GFMC 19.04.090. Granite Falls Municipal Code Section 19.04.090 "Concurrency and Adequacy" is hereby amended to read as follows:

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 _____, 2018 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.

Section 5. Moratorium on Development Activities Established. Subject to the exemptions provided amended GFMC 19.04.090 and the variance process adopted in amended GFMC 19.04.090, a moratorium is hereby established, effective immediately upon the adoption of this Ordinance, upon the filing of 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.

Section 6. Moratorium on Connections to City Sewer System. Subject to the exemptions provided in amended 19.04.090 and the variance process adopted in amended Section 19.04.090, a moratorium is hereby established, effective immediately upon the adoption of this Ordinance, upon 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 7. Interpretation of Ordinance. The City Engineer shall have authority to interpret and provide written interpretations of this Ordinance upon request. Application for such an administrative interpretation of this Ordinance shall be in writing and filed with the City Engineer together with a filing fee as established by resolution of the City Council. Each administrative interpretation of this Ordinance shall be considered on a case-by-case basis, and shall not create any vested rights or be construed as setting precedent for any subsequent application or request.

Section 8. Declaration of Emergency. Based on the recitals set forth above, and in recognition that the sewer capacity within the City is at or almost at its capacity and that new sewer connections and/or increased sewage flow/usage could likely overwhelm the sewer system within the City and thereby poses an unacceptable risk to the public health, public safety, the public welfare, and/or public property, the City Council hereby declares that a public emergency exists necessitating that this Ordinance take effect immediately upon passage of this Ordinance by a majority plus one of the whole membership of City Council.

Section 9. No Special Duty Created. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular individual, class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance.

No provision or term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers, agents, or employees, for whom the implementation or enforcement of this Ordinance shall be discretionary and not mandatory.

Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees, or agents, for any injury or damage resulting from any action or inaction on the part of the City, its officers, employees, or agents.

Section 10. Severability. Should any section, paragraph, sentence, clause and/or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional, illegal or otherwise invalid for any reason by a court of competent jurisdiction, or should any portion of this Ordinance be preempted by state or federal law or regulations, such decision or preemption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 11. Effective Period of Moratorium. The interim regulations and moratorium established by this Ordinance shall become effective as set forth in Section 12 below and shall continue in effect for six (6) months thereafter unless repealed, renewed, or modified by the City Council after a subsequent public hearing and entry of findings of fact.

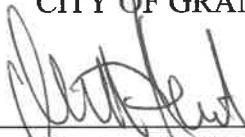
Section 12. Effective Date. As a public emergency exists, this Ordinance shall take effect immediately upon passage by an affirmative vote of the City Council.

Section 13. Publication. This Ordinance shall be published by an approved summary which shall consist of the title of the Ordinance.

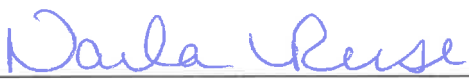
ADOPTED by the City Council and **APPROVED** by the Mayor this 21st day of October, 2020.

CITY OF GRANITE FALLS

By: _____


Matthew Hartman, Mayor

ATTEST/AUTHENTICATED:

By: 
Darla Reese, City Clerk

APPROVED AS TO FORM:

By: 
Thom H. Graafstra, City Attorney

Date of Publication: October 24, 2020

Effective Date: October 25, 2020