

**CITY OF GRANITE FALLS,
WASHINGTON**

ORDINANCE NO. 1032-2022

AN INTERIM ORDINANCE OF THE CITY OF GRANITE FALLS, WASHINGTON, READOPTING 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 RATIFYING ORDINANCES 1021-2022, 1024-2022 AND CHAPTER 19.12.010 RELATING TO 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 and 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, 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 were imposed;

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

WHEREAS, by Ordinance 992-2020 interim regulations and moratoria to address the City's limited wastewater capacity were re-imposed;

WHEREAS, by Ordinance 1006-2021 the interim regulations and moratoria of Ordinance 992-2020 were extended;

WHEREAS, the interim regulations and moratoria expired but the underlying conditions related to the capacity of the City's wastewater plant remain;

WHEREAS interim regulations and a moratorium were reestablished by Ordinances 1015-2021 and 1024 – 2022 which after public hearing were ratified by the City council;

WHEREAS the interim regulations related to concurrency were codified as Section 19.12.010 when adopted by Ordinance 1021-2022;

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) but will end before the end of 2022;

WHEREAS, improvements to the City's wastewater plant have been made 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 within the next year, though planning for improvements may be well underway;

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 ratify, extend and confirm the 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 the 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 Section 1 of Chapter 19.12 Granite Falls Municipal Code.

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 existing interim regulation in Section 19.12.010 GFMC and the moratorium imposed by this Ordinance is set for October 5, 2022.

Section 4. Ratification and Extension of GFMC 19.12.010 interim regulations on concurrency. The interim regulations on concurrency set out in Section 19.12.010 adopted by Ordinance 1021-2022 are hereby readopted, ratified and extended for the period set out in Section 11 below.

Section 5. Moratorium on Development Activities Established. Subject to the exemptions provided GFMC 19.12 and the variance process adopted in said section, a moratorium is hereby established and extended, 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. Binding Site Plans;
- e. Administrative development plans;
- f. Shoreline permits, including but not limited to shoreline substantial development permits and shoreline conditional use permits;
- g. 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;
- h. Conditional use, special use or unclassified use permits;
- i. Annexations, except those for municipal purposes;
- j. Rezones, except those initiated by the City and those associated with comprehensive plan amendments; and
- k. Any other development activities not exempt under GFMC 19.12 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 GFMC 19.12 and the variance process adopted in GFMC 19.12 a moratorium is hereby established, and extended 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 19.12.

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 Interim Regulations and 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.

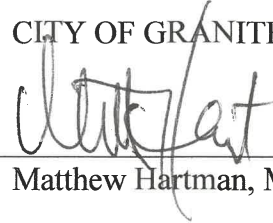
Section 12. Effective Date. As a public emergency exists, this Ordinance shall take effect immediately upon passage by an affirmative vote of the City Council.

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 5th day of October, 2022.

CITY OF GRANITE FALLS

By: _____



Matthew Hartman, Mayor

ATTEST/AUTHENTICATED:

By: Darla Reese
Darla Reese, MMC, City Clerk

APPROVED AS TO FORM:

By: Thom H. Graafstra
Thom H. Graafstra, City Attorney
Emily Guildner, City Attorney

Date of Publication: Oct. 8, 2022

Effective Date: Oct. 5, 2022