

**RESOLUTION NO. – RES 2018-06-01**  
**RESOLUTION OF THE BROOKHAVEN CITY COUNCIL REVISING THE**  
**COMMUNITY GARDEN POLICY AND USER AGREEMENT**

**WHEREAS:** The City of Brookhaven, Georgia (hereinafter, the “City”) was duly incorporated on December 17, 2012; and

**WHEREAS:** The City Council finds that it is within the best interests of the citizens to update and amend the policy Community Garden Policy and User Agreement; and

**WHEREAS:** the city council recognizes the importance of community gardens to our community as well as our citizens; and

**WHEREAS:** the city is amending the Community Garden policy to continue to be in accordance with other community gardens in the metro Atlanta and Dekalb areas.

**NOW THEREFORE BE IT RESOLVED** that the attached Policy (Exhibit A) of the City of Brookhaven be established as the official policy for Community Gardens.

This Resolution shall be effective immediately upon its adoption.

**SO RESOLVED AND EFFECTIVE**, this the 12<sup>th</sup> day of June 2018.

APPROVED:

  
John Arthur Ernst Jr., Mayor

ATTEST:

  
Susan Hiott, City Clerk  
[CITY SEAL]

APPROVED AS TO FORM:

  
Christopher D. Balch, City Attorney



## **City of Brookhaven - Community Garden Policy and User Agreement**

### **PURPOSE:**

The City of Brookhaven recognizes community gardens as valuable recreational and educational resources that contribute to community development, environmental awareness, positive social interaction and community education. The City will collaborate with interested groups in assisting with the development of community gardens on City-owned property.

### **DEFINITIONS:**

A "City Park" shall mean any area of land owned by the City of Brookhaven and maintained by the City for the recreation, use, or enjoyment of all citizens.

A "Community Garden" is defined as a single piece of land gardened collectively by way of designated plots. Each plot is cared for by an individual or shared by a group of people; to grow vegetables, fruits, and flowers for personal use and/or for donation.

"Farmer of Record" is defined as the primary contact for an individual plot.

A "FEMA Lot" is defined as a property that was purchased by the City of Brookhaven, as part of a flood mitigation grant program administered by the Federal Emergency Management Agency (FEMA).

A "Qualifying Entity" is defined as a neighborhood resident, a public or private group of individuals or a nonprofit organization.

"Suitable Lots" are defined as City-owned property that are surplus to the current needs of the City and are within an appropriate zoning area, and found to be appropriate for the surrounding neighborhood. In addition, in the sole discretion of the Director of Parks and Recreation, areas of City Parks may be deemed suitable for use as Community Gardens under this Policy. The determination that property is a Suitable Lot does not constitute a warranty or guaranty that such property is free of contamination or environmental hazards. The City shall not be required to conduct or perform any testing, data collection, or other effort to determine the existence of such hazards.

## ORGANIZATION RESPONSIBILITIES:

An approved Community Garden must be administered by a Qualified Entity represented by a Farmer of Record who shall be the point of contact for the Qualified Entity and Community Garden. A Qualified Entity, through its Farmer of Record, will submit an application for a Community Garden, a copy of which is attached, and if approved, the Qualified Entity will enter into a User Agreement with the City, setting forth the rights and responsibilities of the Qualified Entity respecting the Community Garden.

### 1. Initial application:

- a. Applicant shall provide a Community Garden - Application for Use.
- b. Applicant shall provide a letter of intent. The letter of intent shall specify the uses of the Garden, and provide any additional information the applicant deems significant or appropriate for consideration by the City in determining whether to grant the application.

### 2. Policy and User Agreement:

- a. Qualifying entity shall provide documentation of neighborhood support by providing a signed letter of approval from neighbors within 100' ft. of the property.
- b. Qualifying entity shall provide a drawing of the proposed layout of the gardens that includes the layout of the plots (raised beds), water tap locations, fences, existing trees and roadways. Garden boundaries must meet the setbacks according to the proper zoning of the property. This site plan must be approved by the City of Brookhaven prior to development. It is not necessary that the site plan required by this section be to scale.
- c. Qualifying entity shall provide a list of proposed building materials to include products intended for the design of the raised beds and fencing.
- d. Qualifying entity shall provide a schedule of proposed fees to be collected from individuals wishing to use a plot. All fees must be pre-approved by the City.
  - i. Allotment fees are intended to cover garden costs and improvements only, and shall not exceed the amount necessary to cover the normal operating costs of the garden.
  - ii. Records of fees collected and expenditures related to the garden shall be maintained in a centralized location and available at the City's request.
- e. Qualifying entity shall sign a user's agreement which will serve as the binding agreement for the use and maintenance of the garden.

3. During Subsequent Growing Seasons

- a. Qualifying entity shall be responsible for all garden activities including maintenance and upkeep of garden grounds, collection of allotment fees, and payment of water & electric charges if applicable.

**GUIDELINES FOR USE:**

1. **FEMA Lots:** Certain restrictions are placed on the use of property that was purchased by the City of Brookhaven under the FEMA flood mitigation grant, above and beyond the guidelines listed below. All plans relating to a FEMA lot will require approval on a case- by-case basis by the local FEMA administrator, prior to any construction.
2. **Terms:** The initial term of user agreement will be clearly defined with a start and ending date but not less than two years. The user agreement may be renewed annually for additional terms at the discretion of the City. A qualifying entity shall provide notice to the City of its intent to abandon its use no less than 60 days prior to the expiration of any term of the user agreement.
3. **Limits of Agricultural Use:** The garden area shall be limited to growth of vegetables, fruits and flowers. Planting of trees will be allowed only in containers. The garden shall not be used for any type of livestock or poultry.
4. **Chemicals:** The use of insecticides, herbicides and synthetic fertilizers is strictly prohibited. Only natural organic methods and products shall be used for the treatment of nuisances and to provide plant and soil nutrition. The Qualifying Entity is encouraged to reference the Environmental Protection Agency's National Organic Program.
5. **Plots:** Plots will be assigned to an individual or a group. Each plot can be shared by as many people as desired, with one person being designated as the plots' "farmer of record".
6. **Sale of Products:** Sale of products is prohibited; products grown are for personal use by the members of the garden or for donation only.
7. **Means of Planting:** Raised Beds with suitable commercial grade fabric barrier lying at the base and lower sides, to prevent disturbance of native soils and to protect new soils from contaminants. New soil should be brought to the site that is suitable for planting edible vegetation. No tilling of existing ground is allowed.
8. **Water Source:** In most cases potable water will be available on or in close proximity to the site. It is the Community Garden Group's responsibility to pay for the usage of water at their respective community garden location. If a Community Garden group has an already established account with Dekalb County Watershed Management, they will continue to be responsible for paying their water usage fee. However, if a community Garden group does not have an existing account with Dekalb County Watershed Management, alternate arrangements will be made with the City to recover fees associated with water usage a the Community Garden.
9. **Mechanical Equipment:** Mechanical equipment is limited to residential grade, restricted to use between sunrise and sunset, and must adhere to the Brookhaven Code of Ordinances, regarding noise control. No equipment shall be stored on-site.

10. **Trash:** No trash or debris shall be left on site at any time.
11. **Accessory Structures:** Only approved structures are permitted, i.e. storage sheds, greenhouses, etc
12. **Composting:** No composting activity will be allowed on-site without a pre-approved composting plan. Only one (1) composting area will be allowed on-site. Composting materials are generated from the site only, and outside materials will not be brought in.
13. **Fencing:** Fencing will be approved by the City of Brookhaven City Council prior to construction, on a site-by-site basis. Fencing is meant to provide a visual delineation of the garden lot from the right-of-way and is NOT intended to provide security.
14. **Signage:** A decorative sign, meeting local zoning codes for the neighborhood and/or district, and no larger than 18”h x 24”w may be hung at the front of the garden to display the name of the garden and associated entity. A laminated document 8.5” x 11” showing the Qualifying entity’s contact information, including the primary and alternate contacts, along with the rules and guidelines for the garden will be posted within the garden boundaries, at a readable height.
15. **Boundaries:** Garden areas shall not encroach onto adjacent properties. The cultivated areas will meet the required setback(s) for the zoning district in which the garden is located.
16. **Maintenance:** The property shall be maintained free of high grass and weeds in accordance with the City of Brookhaven’s Property Maintenance Ordinance. Dead garden plants shall be removed regularly. Rotting fruits and vegetables shall be collected from garden areas and properly disposed of offsite or in compost area.
17. **Miscellaneous Improvements:** Benches and trellises and will be permitted on site as miscellaneous improvements. Decorative ornamentation will be restricted to placement within an individual’s plot. Items within the garden will be limited in height and will not block clear site lines into the garden from the right-of-way(s).
18. **Operating Hours:** Operating hours for community garden activities shall be restricted between sunrise and sunset, 7 days a week.
19. **Insurance/ Waivers:** The Qualifying Entity shall obtain and maintain an up to date City of Brookhaven Hold harmless waiver form with the signatures of participants in the community garden.
20. **Lighting:** No overhead lighting shall be permitted on site.
21. **Parking:** No parking will be permitted on the site. Parking will only be allowed in marked spaces (if the Community Garden is in a City Park) or as permitted on streets (if on other City owned and maintained open/green space).
22. **Existing Trees:** Removing or cutting of existing trees is strictly prohibited, unless otherwise approved by the City of Brookhaven. Any fees associated with the removal of existing trees shall be the sole responsibility of the Qualifying Entity.
23. **Fundraising:** Qualifying entities are free to undertake fundraising activities in order to build community support and resources to defray costs associated with operating a community garden. However, any fundraising activities involving use of the actual property must be pre-approved by

the City of Brookhaven.

24. **Access:** The City of Brookhaven must have 24-hour access to the property.
25. **Exceptions:** Any use condition for a Community Garden may be modified by Special Exception upon approval by the City of Brookhaven.
26. **Termination of Agreement:** Should the City determine that the lot is not being used for its intended purpose or that it is not being maintained, this agreement shall terminate within two (2) weeks of a written notice from the City of Brookhaven. The qualifying entity has the right to terminate the agreement by submitting a two (2) week written notice to the City of Brookhaven. At termination of the agreement, the qualifying entity must return the site to its pre-garden condition. In the event the City must clean up, rehabilitate, or take any other action to return the Suitable Lot to its pre-garden condition, the Qualifying Entity and the Farmer of Record, jointly and severally, shall be responsible to reimburse the City all sums expended to remove any and all debris, beds, composting materials, or other items found on the site, to include the cost of labor, haulage, disposal, and any other fees or costs incurred by the City in completing the clean-up required.
27. **Other Provisions Specific to this Site:** Individual lots may have conditions not addressed in this policy. If deemed necessary, an attachment will be included as part of this policy, listing other provision(s) specific to the site and will be considered part of the agreement.
28. Any disputes arising under this Policy, or the Agreement authorizing the use of a Suitable Lot for a Community Garden shall be resolved solely by binding arbitration to be held in accordance with the rules of the National Arbitration Association (NAA) and before a single Arbitrator certified by the NAA to conduct arbitrations. The arbitrator shall be selected jointly by the parties. In the event the parties cannot agree, then each party shall designate an unaffiliated person to act on its behalf and those unaffiliated persons shall select the arbitrator. For purposes of this policy an Unaffiliated Person means someone who is not a member of the Qualifying Entity or an employee of the City, and is not related by blood or marriage as a child, step-child, parent, grandparent, aunt, uncle, or cousin of any member or employee of the City.

**BY SIGNING BELOW, I AGREE THAT I** have read and understand the City of Brookhaven's "Community Garden Policy and User Agreement"; accept the terms of the policy as set forth in the agreement; understand that the agreement is non-transferrable; agree to carry out the above functions with due care.

I further agree to indemnify and hold harmless the City of Brookhaven, its officers, employees, agents, and assigns, against any and all losses, claims, lawsuits, and liability, including the City's reasonable attorney's fees, arising out of the qualifying entity's entry, actions, and use of the requested property.

\_\_\_\_\_  
(Name of Organization)

\_\_\_\_\_  
(Address of Organization)

\_\_\_\_\_  
(Phone #)

\_\_\_\_\_  
(Authorized Representative of Organization, Print)

\_\_\_\_\_  
(Position/ Title)

\_\_\_\_\_  
(Authorized Representative of Organization, Signature)

\_\_\_\_\_  
(Date)

**ATTACHMENTS:**

FEMA Lot Guidelines and Restrictions (Exhibit A)

Other provisions specific to this site

\_\_\_\_\_  
(This section to be used by City of Brookhaven only)

Approved: \_\_\_\_\_ Not Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Signed by City of Brookhaven Staff: \_\_\_\_\_

Start of Agreement Date: \_\_\_\_\_

End of Agreement Date: \_\_\_\_\_

Date of First Site Visit by City Staff: \_\_\_\_\_

Additional Notes: