

**AN ORDINANCE EXTENDING THE DECLARATION OF A STATE OF EMERGENCY ARISING BECAUSE OF COVID-19 ESTABLISHED BY ORDINANCE 2020-03-05 AS MODIFIED BY ORDINANCE 2020-03-06 AS EXTENDED; TAKING IMMEDIATE EMERGENCY MEASURES; ADOPTING THE CONDITIONS OF THE GOVERNOR'S EXECUTIVE ORDER 06.11.20.01; ESTABLISHING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

**WHEREAS**, the President of the United States declared a National Public Health Emergency on March 13, 2020; and

**WHEREAS**, the Governor of the State of Georgia declared a State Public Health Emergency on March 14, 2020 and urged "local officials to do what's in the best interests of their communities to keep people safe and stop the spread of coronavirus" and has extended that State of Emergency through December 13, 2020; and

**WHEREAS**, the World Health Organization has declared Coronavirus Disease 2019 (COVID-19) a world health emergency and a pandemic; and

**WHEREAS**, the number of confirmed cases and deaths from COVID-19 continues to escalate rapidly, internationally, nationally, and locally with Georgia averaging over 2500 new cases every day for the last 2 weeks; and

**WHEREAS**, based upon the experience of other local governments in Georgia, a growing number of other cases are occurring; and

**WHEREAS**, on March 16, 2020, the Center for Disease Control (CDC) and the President of the United States stated that any gathering of over 10 people should be discontinued or prohibited; and

**WHEREAS**, public health experts, including those at the CDC and the National Institutes of Health (NIH), have advised that individuals infected with COVID-19 are contagious even while experiencing minor or no symptoms and have consistently implored leaders to continue action to prevent further community spread of COVID-19; and

**WHEREAS**, preventing and slowing community spread of COVID-19 provides health systems additional time to obtain personal protective equipment necessary to protect health care workers and medical equipment necessary to treat COVID-19, and is therefore vital to the health of the nation;

**WHEREAS**, in the judgment of the Mayor and Council of the City of Brookhaven, there exists emergency circumstances located within its jurisdiction requiring extraordinary and

immediate response for the protection of the health, safety, and welfare of the citizens of the community, the state, and the nation; and

**WHEREAS**, it is essential for the governing authority of the City to act immediately in order to minimize the spread of COVID-19 and to prevent or minimize sickness, injury, or death, to people and damage to property resulting from this public health crisis; and

**WHEREAS**, O.C.G.A. § 38-3-28 provides the political subdivisions of this state with the authority to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes to supplement rules and regulations promulgated by the Governor during a State of Emergency; and

**WHEREAS**, the United States Supreme Court has previously held that “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members”; and

**WHEREAS**, the Charter of the City of Brookhaven provides the governing authority of the city with the authority to take actions deemed necessary to deal with such an emergency for the protection of the safety, health, and well-being of the citizens of the city; and

**NOW, THEREFORE, IT IS HEREBY DECLARED** that a local state of emergency exists within the City and shall continue until the conditions requiring this declaration are abated.

**THEREFORE, IT IS ORDERED AND ORDAINED BY THE AUTHORITY OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BROOKHAVEN AS FOLLOWS:**

**Section 1. Findings of Fact**

For purposes of describing the circumstances which warrant the adoption of an emergency ordinance, the governing authority of the City hereby adopt and make the findings included in the “WHEREAS” clauses as findings of fact.

**Section 2. Extension of Declaration of Public Health State of Emergency**

The Mayor and City Council hereby extend the public health state of emergency, previously declared and established by Ordinance 2020-03-05, within the City because of the proliferation of COVID-19 in the United States and the State of Georgia, which will remain in force and effect as provided herein.

**Section 3. Public Gatherings on City Property**

For the duration of the declared emergency, there shall be no public gatherings on any property owned or controlled by the City. To avoid confusion, the following definitions shall apply under this Section: a “public gathering” shall mean the organized gathering or

assembly of 30 or more persons at a specific location unless social distancing may be maintained; "property owned or controlled by the City" shall include any park, public square, public space, playground, recreational area, or similar place of public gathering, but nothing herein shall prohibit individuals or families from using sidewalks or designated pedestrian areas of parks for walking or other exercise if they are not participating in an organized gathering, and while maintaining social distancing of at least 6 feet between unrelated or non-cohabiting persons.

#### **Section 4. Classification of City Services**

For the duration of the declared emergency, the City Manager shall be vested with the following discretion and authority:

- (a) To categorize City services as either "required" or "discretionary," and to periodically review and modify such categories.
- (b) To assign specific employees to required or discretionary services, and to periodically review and modify such assignments.
- (c) To use his or her discretion to permit employees to telework.
- (d) To temporarily suspend the provision of discretionary services and to direct employees who provide discretionary services not to report to work until such time as the service suspension is lifted or until such time as the City Manager redirects the employee to other services.
- (e) To maintain, to the best of the ability of the resources of the City, the provision of essential services, which shall include, but not be limited to, public safety, public works, healthcare, and building permits.
- (f) To determine if City Buildings, facilities, playgrounds, and services should be closed or suspended

Any actions taken by the City Manager prior to the passage of this Ordinance that are authorized by this section are hereby ratified and approved by the Governing Authority of the City.

### **Section 5. Eating Establishments**

The conditions and authority of Restaurants to operate shall continue as provided in Ordinance 2020-04-06, including encouraging take out and permitting take-away delivery of alcoholic beverages by the drink. Any and all regulations governing occupancy, capacity, or limits on outdoor space are suspended for the duration of this order, except for the limits imposed herein for social distancing and gatherings as established by the Centers for Disease Control and Prevention. Additionally, any limits, regulations, or other policies related to the use of outdoor space to supplement service capacity or the use of signs to advertise hours, policies, or service options are suspended during the efficacy of this Ordinance.

### **Section 6. Emergency Powers and Authority of the Mayor**

(a) The Council expressly delegates to the Mayor authority and power to take emergency action as he deems appropriate, after consultation with the Council, to include:

(1) Declaring and announcing further closures of businesses or changing the definition of essential businesses;

(2) Declaring further measures as may be necessary to stem the spread of COVID-19 as may be defined, refined, or changed by the Centers for Disease Control and Prevention, the National Institute of Health, or the World Health Organization;

(3) Establishing or extending a Shelter in Place Order directive;

(4) Taking such action as may be necessary to protect the health, safety, and welfare of the citizens and residents of Brookhaven.

(b) The Council may call a special emergency meeting as established in the Charter to ratify, amend, or rescind any declaration by the Mayor.

(c) Any emergency declaration or order by the Mayor may not last beyond the date and time of the next regularly scheduled meeting of the Mayor and City Council.

### **Section 7. Finding for Purposes of Open Meetings Act**

The Open Meetings Act, O.C.G.A. § 51-14-1 *et seq.*, allows public agencies such as the City to conduct their meetings via teleconference in the event of an emergency. The Council expressly finds and declares that the Global Pandemic caused by the spread of COVID-19 constitutes an emergency within the terms of the Act. Accordingly, all meetings of any Board, Commission, Authority, or the City Council shall be held by virtual means, to include the use of the Zoom platform with concurrent live streaming of the proceedings on Facebook Live or YouTube live as chosen and selected by the Administration. Public Comment will be taken via the Zoom Platform or with emailed comments to

[publiccomment@brookhavenga.gov](mailto:publiccomment@brookhavenga.gov). In all other respects the meetings will be conducted as though they were in person and held at City Hall.

**Section 8. Conflicts**

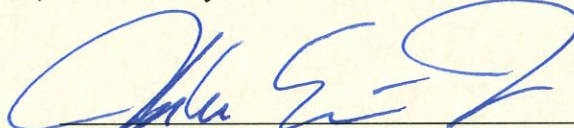
All ordinances or parts of ordinances in conflict with the provisions of this Declaration are hereby suspended during the effective dates of this ordinance (or any extension thereof) and the terms and provisions of this ordinance shall prevail.

**Section 9. Finding of Unlawfulness or Pre-emption**

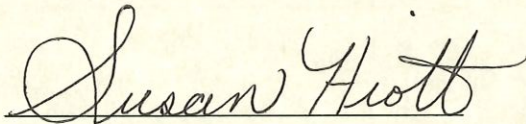
If any Court of competent jurisdiction shall find any part or portion of this Ordinance to be unlawful or pre-empted by State law, such section shall be null, void, and of no force or effect; however all other and remaining portions and parts of this Ordinance shall remain in full force and effect, notwithstanding the invalidated section.

This Ordinance shall become effective immediately and shall be in place until January 15, 2021, unless further extended by action provided herein.

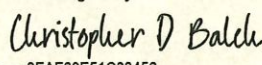
ORDAINED AND RESOLVED, this 24th day of November 2020.

  
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John Arthur Ernst, Jr.  
Mayor

Attest:

  
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Susan Hiott  
City Clerk

Approved as to form:

DocuSigned by:  
  
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Christopher D. Balch  
City Attorney

