

Dear Mayor and Council:

Upon appointment by the Mayor and confirmation by the Council, the Charter Review Commission met seven times in open, public, and advertised sessions to discuss the Charter and potential amendments and to fulfill the mission set by you and the City's Charter. The City Attorney's Office, the City Manager, and Assistant City Manager provided staff support for the Commission's work.

The Commission spent its initial meeting identifying areas of the Charter needing attention. It assigned certain tasks to its members and set out to define the timeline for completion of these tasks. The City Attorney provided a memorandum that is part of our minutes outlining some of the issues to be addressed during our work.

The Commission devoted several meetings to reviewing the implications of the current cap on the millage rate for ad valorem taxes as set forth in Charter § 1.03(a)(37). The City Manager, the Financial Advisor, and the Chief Financial Officer advised that the continued existence of the cap would be an impediment to achieving a AAA bond rating.

A AAA bond rating would allow the City to finance its capital projects at the most advantageous terms. The Commission discussed the City's need for such projects in the near future. The Commission concluded that (1) removal of the cap would not guarantee a AAA rating; (2) the presence of the cap would not prevent the City from financing its capital projects (3) the difference in finance costs due to a AA bond rating would not be significant and (4) that the cap was an integral promise to Brookhaven residents during the incorporation vote. For these reasons the Commission's draft does not include removal of the millage rate cap.

The Commission also spent considerable time discussing election mechanics and term limits for elected officials. The Commission found no cause to change the timing of the elections. With regard to term limits, the Commission found that City has a wealth of well educated, civic minded and otherwise qualified residents available to serve in elected office. Because of the advantages of incumbency, these talented people are reluctant to stand for office. One half of Council elections have featured an unchallenged incumbent. The Commission further found that the imposition of term limits allows for innovation and responsiveness. The Commission's draft, therefore, recommends that (1) the term limit for the Office of Mayor be increased to 3 consecutive terms (i.e. 12 years) and (2) that City Council also be subject to term limits of 3 consecutive terms.

The Commission's intended the draft language to simply prohibit a fourth consecutive term. It is not intended to prevent an office-holder from holding a fourth, or subsequent, non-consecutive term.

The Commission also proposes a slight increase in elected official compensation and the amount of reimbursable expenses (Charter § 2.07). The Commission also recommends a change to Section 2.10 allowing for the existence of a quorum any time there is a gathering of any 3 members of the Council or two Council members and the Mayor. Finally, the Commission recommends that the Charter be amended to require that members of the Planning Commission, the Zoning Board of Appeals, and the Development Authority be Brookhaven residents. The Commission did not intend this requirement to extend to members of any other advisory committee or board.

The Commission recommended a number of changes to Article III of the Charter. Most of these suggestions are clean up or administrative changes (i.e., removing a delegated power of the Mayor that is subject to Council confirmation, when Council confirmation would be required anyway). A number of changes, however, are recommended to the powers, authority, and processes associated with the City Manager, including appointment and termination. The provisions of the current Charter mandating a suspension and public hearing prior to separation of the City Manager are not required by Georgia law. The Commission proposed revisions that provide the City greater flexibility than the current Charter.

The Commission recommends that the Finance Director position be removed from the Mayor's appointment list. The Commission found that City Manager operates as the budget officer for the City. Accordingly, the Commission recommends that all financial functions and appointments should report to, and be subject to supervision by, the City Manager.

The Commission has made no recommendations for changes to Article IV of the Charter, related to the establishment, operation, or function of the Municipal Courts.

The Commission also devoted a good portion of its working time on amendments and changes to Article V as requested by the City's Chief Financial Officer. The current Charter provides a municipal homestead exemption of \$40,000 for residents of the City. In addition, it provides a valuation freeze that is backdated to the year before the homestead exemption is applied for and given to the homeowner. That means that a home that sells in 2017 for \$650,000, and for which a homestead exemption is applied in 2017, is taxed at the value of the residence in 2016, not the new sales price in 2017. This difficult aspect of the Charter has caused, and will continue to cause, an inequitable decline in the tax digest for the funding of the City's operations. The Commission recommends, therefore, technical amendments to Article V of the Charter to allow the digest to reflect the actual values of homes being bought and sold in Brookhaven.

The Commissions also recommends a substantial clean-up to Article VI of the Charter so as to delete provisions that dealt with the referendum for cityhood and other procedural matters. This includes the recommended deletion of Sections 6.02 and 6.03.

The exact language of the amendments, and the text recommended to be deleted, are attached to this report as attachments.

ARTICLE I. CREATION, INCORPORATION, POWERS

ARTICLE I. CREATION, INCORPORATION, POWERS

[Section 1.01. Incorporation.](#)

[Section 1.02. Corporate boundaries.](#)

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Section 1.01. Incorporation.

This Act shall constitute the Charter of the City of Brookhaven, Georgia. The City of Brookhaven, Georgia, in the County of DeKalb, and the inhabitants thereof, are constituted and declared a body politic and corporate under the same name and style of the "City of Brookhaven" and by that name shall have perpetual succession, may sue and be sued, plead and be impleaded, in all courts of law and equity, and in all actions whatsoever, and may have and use a common seal.

Section 1.02. Corporate boundaries.

The boundaries of the City of Brookhaven shall be those set forth and described in Appendix A of [to] this Charter, and said Appendix A is incorporated into and made a part of this Charter. The city clerk shall maintain a current map and written legal description of the corporate boundaries of the city, and such map and description shall incorporate any changes which may hereafter be made in such corporate boundaries.

Section 1.03. Powers and construction.

- (a) This city shall have all powers possible for a city to have under the present or future Constitution and laws of this state as fully and completely as though they were specifically enumerated in this Act. This city shall have all the powers of self-government not otherwise prohibited by this Act or by general law.
- (b) The powers of this city shall be construed liberally in favor of the city. The specific mention or failure to mention particular powers shall not be construed as limiting in any way the powers of this city. These powers shall include, but not be limited to, the following:
 - (1) *Animal regulations* . To regulate and license or to prohibit the keeping or running at large of animals and fowl, and to provide for the impoundment of same if in violation of any ordinance or lawful order; to provide for the disposition by sale, gift, or humane destruction of animals and fowl when not redeemed as provided by ordinance; and to provide punishment for violation of ordinances enacted hereunder;
 - (2) *Appropriations and expenditures* . To make appropriations for the support of the government of the city; to authorize the expenditure of money for any purposes authorized by this Charter and for any purpose for which a municipality is authorized by the laws of the State of Georgia; and to provide for the payment of expenses of the city;
 - (3) *Building regulation* . To regulate and to license the erection and construction of buildings and all other structures; to adopt building, housing, plumbing, electrical, gas, and heating and air conditioning codes; and to regulate all housing and building trades to the extent permitted by general law;

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- (4) *Business regulation and taxation* . To levy and to provide for the collection of regulatory fees and taxes on privileges, occupations, trades, and professions as authorized by title 48 of the O.C.G.A. or other such applicable laws as are or may hereafter be enacted; to permit and regulate the same; to provide for the manner and method of payment of such regulatory fees and taxes; and to revoke such permits after due process for failure to pay any city taxes or fees;
- (5) *Condemnation*.
 - (A) To condemn property inside the corporate limits of the city for present or future use and for any public purpose deemed necessary by the city council utilizing procedures enumerated in title 22 of the O.C.G.A. or such other applicable laws as are or may hereafter be enacted;
 - (B) The municipality shall have the right to condemn and cause to be remediated or removed any building, structure, or existing condition within its corporate limits that is dangerous to life, limb, or property, by reasons of decay, dilapidation, or unsanitary condition. Nothing in this subparagraph shall be construed to relieve the municipality of any duty to give owners or interested persons reasonable notice and opportunity to remedy the situation. Nothing in this subparagraph shall be construed as relieving the municipality of liability to any interested person for damages to person or property taken or destroyed in furtherance of this subparagraph. This subparagraph shall not be construed as authorizing the doing of any act or thing contrary to the Constitution of this state and the policy of the general laws of this state. The municipality shall have authority to adopt reasonable ordinances and resolutions for the purpose of carrying out this subparagraph;
- (6) *Contracts* . To enter into contracts and agreements with other governmental entities and with private persons, firms, and corporations;
- (7) *Emergencies* . To establish procedures for determining and proclaiming that an emergency situation exists within or without the city, and to make and carry out all reasonable provisions deemed necessary to deal with or meet such an emergency for the protection, safety, health, or well-being of the citizens of the city;
- (8) *Environmental protection* . To protect and preserve the natural resources, environment, and vital areas of the city, the region, and the state through the enactment of ordinances that preserve and improve air quality, restore and maintain water resources, the control of erosion and sedimentation, manage storm water and establish a storm-water utility, manage solid and hazardous waste, and provide other necessary or beneficial actions for the protection of the environment. These ordinances shall include, without limitation, ordinances that protect, maintain, and enhance the public health, safety, environment, and general welfare and minimize public and private losses due to flood conditions in flood hazard areas, as well as protect the beneficial uses of flood plain areas for water quality protection, stream bank and stream corridor protection, wetlands preservation, and ecological and environmental protection. Such ordinances may require that users vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction; restrict or prohibit uses which are dangerous to health, safety, and property due to flooding or erosion hazards, or which increase flood heights, velocities, or erosion; control filling, grading, dredging, and other development which may increase flood damage or erosion; prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; limit the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters; and protect the storm-water management, water quality, stream bank protection, stream corridor protection, wetland preservation, and ecological functions of natural flood plain areas;
- (9) *Ethics* . To adopt ethics ordinances and regulations governing such things as, but not limited to, the conduct of municipal elected officials, appointed officials, contractors, vendors, and employees, establishing procedures for ethics complaints, and setting forth penalties for violations of such rules and procedures;

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- (10) *Fire regulations* . To fix and establish fire limits and from time to time to extend, enlarge, or restrict the same; to prescribe fire safety regulations not inconsistent with general law, relating to both fire prevention and detection and to fire fighting; and to prescribe penalties and punishment for violations thereof;
- (11) *Garbage fees* . To levy, fix, assess, and collect a garbage, refuse, and trash collection and disposal and other sanitary service charge, tax, or fee for such services as may be necessary in the operation of the city from all individuals, firms, and corporations residing in or doing business therein benefiting from such services; to enforce the payment of such charges, taxes, or fees; and to provide for the manner and method of collecting such service charges, taxes, or fees;
- (12) *General health, safety, and welfare* . To define, regulate, and prohibit any act, practice, conduct, or use of property which is detrimental to health, sanitation, cleanliness, welfare, and safety of the inhabitants of the city, and to provide for the enforcement of such standards;
- (13) *Gifts*. To accept or refuse gifts, donations, bequests, or grants from any source for any purpose related to powers and duties of the city and the general welfare of its citizens, on such terms and conditions as the donor or grantor may impose;
- (14) *Health and sanitation* . To prescribe standards of health and sanitation and to provide for the enforcement of such standards;
- (15) *Homestead exemption* . To establish and maintain procedures for offering homestead exemptions to residents of the city and maintaining current homestead exemptions of residents of the city as authorized by Act of the General Assembly;
- (16) *Jail sentences* . To provide that persons given jail sentences in the city's court may work out such sentences in any public works or on the streets, roads, drains, and other public property in the city; to provide for commitment of such persons to any jail; to provide for the use of pretrial diversion and any alternative sentencing allowed by law; or to provide for commitment of such persons to any county work camp or county jail by agreement with the appropriate county officials;
- (17) *Motor vehicles* . To regulate the operation of motor vehicles and exercise control over all traffic, including parking upon or across the streets, roads, alleys, and walkways of the city;
- (18) *Municipal agencies and delegation of power*. To create, alter, or abolish departments, boards, offices not specified in this Charter, commissions, authorities, and agencies of the city; and to confer upon such agencies the necessary and appropriate authority for carrying out all the powers conferred upon or delegated to the same;
- (19) *Municipal debts* . To appropriate and borrow money for the payment of debts of the city and to issue bonds for the purpose of raising revenue to carry out any project, program, or venture authorized by this Charter or the laws of the State of Georgia;
- (20) *Municipal property ownership* . To acquire, dispose of, lease, and hold in trust or otherwise any real, personal, or mixed property, in fee simple or lesser interest, inside or outside the property limits of the city;
- (21) *Municipal property protection* . To provide for the preservation and protection of property and equipment of the city and the administration and use of same by the public; and to prescribe penalties and punishment for violations thereof;
- (22) *Municipal utilities* . To acquire, lease, construct, operate, maintain, sell, and dispose of public utilities, including but not limited to a system of waterworks, sewers and drains, sewage disposal, storm-water management, gasworks, electricity generating plants, cable television and other telecommunications, transportation facilities, public airports, and any other public utility; to fix the taxes, charges, rates, fares, fees, assessments, regulations, and penalties; and to provide for the withdrawal of service for refusal or failure to pay the same;

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- (23) *Nuisance* . To define a nuisance and provide for its abatement whether on public or private property;
- (24) *Penalties* . To provide penalties for violation of any ordinances adopted pursuant to the authority of this Charter and the laws of the State of Georgia;
- (25) *Planning and zoning* . To provide comprehensive city planning for city land use, signage and outside advertising, and development by zoning; and to provide subdivision regulation and the like as the city council deems necessary and reasonable to ensure a safe, healthy, and aesthetically pleasing community;
- (26) *Police and fire protection* . To exercise the power of arrest through duly appointed police officers, and to establish, operate, or contract for a police and a fire-fighting agency;
- (27) *Public hazards; removal* . To provide for the destruction and removal of any building or other structure that is or may become dangerous or detrimental to the public;
- (28) *Public improvements* . To provide for the acquisition, construction, building, operation, maintenance, or abolition of public ways, parks and playgrounds, recreational facilities, cemeteries, public buildings, libraries, public housing, parking facilities, and charitable, cultural, educational, recreational, conservation, sport, detentional, penal, and medical institutions, agencies, and facilities; to provide any other public improvements inside the corporate limits of the city and to regulate the use of public improvements; and for such purposes, property may be acquired by condemnation under title 22 of the O.C.G.A. or such other applicable laws as are or may hereafter be enacted;
- (29) *Public peace* . To provide for the prevention and punishment of loitering, disorderly conduct, drunkenness, riots, and public disturbances;
- (30) *Public transportation* . To organize and operate such public transportation systems as are deemed beneficial;
- (31) *Public utilities and services* . To grant franchises or make contracts for, or impose taxes on, public utilities and public service companies; and to prescribe the rates, fares, regulations, and standards and conditions of service applicable to the service to be provided by the franchise grantee or contractor, insofar as not in conflict with valid regulations of the Public Service Commission;
- (32) *Regulation of roadside areas* . To prohibit or regulate and control the erection, removal, and maintenance of signs, billboards, trees, shrubs, fences, buildings, and any and all other structures or obstructions upon or adjacent to the rights of way of streets and roads or within view thereof, within or abutting the corporate limits of the city; and to prescribe penalties and punishment for violation of such ordinances;
- (33) *Employee benefits* . To provide and maintain a retirement plan, insurance, and such other employee benefits for appointed officers and employees of the city as are determined by the city council;
- (34) *Roadways* . To lay out, open, extend, widen, narrow, establish or change the grade of, abandon or close, construct, pave, curb, gutter, adorn with shade trees, or otherwise improve, maintain, repair, clean, prevent erosion of, and light the roads, alleys, and walkways within the corporate limits of the city; to grant franchises and rights of way throughout the streets and roads and over the bridges and viaducts for the use of public utilities; and to require real estate owners to repair and maintain in a safe condition the sidewalks adjoining their lots or lands and to impose penalties for failure to do so;
- (35) *Solid waste disposal* . To provide for the collection and disposal of garbage, rubbish, and refuse and to regulate the collection and disposal of garbage, rubbish, and refuse by others; and to provide for the separate collection of glass, tin, aluminum, cardboard, paper, and other recyclable materials and to provide for the sale of such items;

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- (36) *Special assessments*. To levy and provide for the collection of special assessments to cover the costs for any public improvements, subject to referendum;
- (37) *Taxes; ad valorem*. To levy and provide for the assessment, valuation, revaluation, and collection of taxes on all property subject to taxation; provided, however, that:
- (A) The millage rate imposed for ad valorem taxes on real property shall not exceed 3.35 unless a higher limit is recommended by resolution of the city council and approved by a majority of the qualified electors of the City of Brookhaven voting on the issue, provided that the amount of millage associated with general obligation bonds shall not count as part of the 3.35 limit since such millage is already subject to approval by the electors of the city in a separate referendum; and
- (B) For all years, the fair market value of all property subject to taxation shall be determined according to the tax digest of DeKalb County, as provided in Code section 48-5-352 of the O.C.G.A.;
- (38) *Taxes: other*. To levy and collect such other taxes and fees as may be allowed now or in the future by law;
- (39) *Taxicabs*. To regulate and license vehicles operated for hire in the city; to limit the number of such vehicles; to require the operators thereof to be licensed; to require public liability insurance on such vehicles in the amounts to be prescribed by ordinance; to inspect said vehicles and mandate standards of safety and cleanliness; and to regulate the parking of such vehicles;
- (40) *Tourism, conventions, and trade shows*. To provide for the structure, operation, or management of the Brookhaven Convention and Visitors Bureau created pursuant to section 1.05 of this Charter and to authorize the City of Brookhaven to contract with private sector nonprofit organizations or other governmental agencies to promote tourism, conventions, and trade shows;
- (41) *Urban redevelopment*. To organize and operate an urban redevelopment program; and
- (42) *Other powers*. To exercise and enjoy all other powers, functions, rights, privileges, and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, or general welfare of the city and its inhabitants; to exercise all implied powers necessary or desirable to carry into execution all powers granted in this Charter as fully and completely as if such powers were fully stated herein; and to exercise all powers now or in the future authorized to be exercised by other municipal governments under other laws of the State of Georgia; and any listing of particular powers in this Charter shall not be held to be exclusive of others or restrictive of general words and phrases granting powers, but shall be held to be in addition to such powers unless expressly prohibited to municipalities under the Constitution or applicable laws of the State of Georgia.

Section 1.04. Exercise of powers.

All powers, functions, rights, privileges, and immunities of the city, its officers, agencies, or employees shall be carried into execution as provided by this Act. If this Charter makes no provision, such shall be carried into execution as provided by ordinance or as provided by pertinent laws of the State of Georgia.

Section 1.05. Tourism, conventions, and trade shows.

The Brookhaven Convention and Visitors Bureau is hereby created.

ARTICLE II. GOVERNMENT STRUCTURE, ELECTIONS, AND LEGISLATIVE BRANCH

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Section 2.01. City council creation; number; election.

- (a) The legislative authority of the government of the City of Brookhaven, except as otherwise specifically provided in this Charter, shall be vested in a city council of which the mayor shall be a voting member to the extent provided in subsection (a) of section 2.10 of this Charter.
- (b) (1) The city council of Brookhaven, Georgia shall consist of four members, plus the mayor.
- (2) (A) For the purposes of electing members of the city council, the City of Brookhaven shall be divided into four council districts, designated Council Districts 1 through 4. Such four districts shall be and correspond to those four numbered districts described in and attached to and made a part of this Charter as Appendix "B" and further identified as 'Plan: BHccR2-2012 Plan Type: Local Administrator: H080 User: Gina'.
- (B) (i) For the purposes of such plan:
 - (l) The term 'VTD' shall mean and describe the same geographical boundaries as provided in the report of the Bureau of the Census for the United States decennial census of 2010 for the State of Georgia. The separate numeric designations in a district description which are underneath a VTD heading shall mean and describe individual Blocks within a VTD as provided in the report of the Bureau of the Census for the United States decennial census of 2010 for the State of Georgia; and

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- (II) Except as otherwise provided in the description of any district, whenever the description of any district refers to a named city, it shall mean the geographical boundaries of that city as shown on the census maps for the United States decennial census of 2010 for the State of Georgia.
 - (ii) Any part of the City of Brookhaven which is not included in any district described in subparagraph (A) of this paragraph shall be included within that district contiguous to such part which contains the least population according to the United States decennial census of 2010 for the State of Georgia.
 - (iii) Any part of the City of Brookhaven which is described in subparagraph (A) of this paragraph as being included in a particular district shall nevertheless not be included within such district if such part is not contiguous to such district. Such noncontiguous part shall instead be included within that district contiguous to such part which contains the least population according to the United States decennial census of 2010 for the State of Georgia.
 - (iv) Any part of the City of Brookhaven which is described in subparagraph (A) of this paragraph as being included in a particular district which, on the effective date of this Act is within the corporate boundaries of another municipality, shall not be included within such district.
 - (v) Any part of the City of Brookhaven which is described in subparagraph (A) of this paragraph as being included in a particular district which is not within the corporate boundaries of the City of Brookhaven shall not be included within such district.
- (C) Following each decennial census, the city council shall revise such districts pursuant to Code section 36-35-4.1 of the O.C.G.A. to maintain a proper population balance among such districts.
- (3) One councilmember shall be elected from each of the four council districts. Each person desiring to offer as a candidate for councilmember shall designate the council district for which he or she is offering. Councilmembers shall be elected by a majority vote of the qualified electors of the respective council districts voting at the elections of the city. In the event that no candidate for a council district obtains a majority vote of the qualified electors of the council district voting in the election, then a run-off election shall be held. The candidates receiving the two highest numbers of votes in the election for such council district shall be included in the run-off election. The person receiving the highest number of votes of the qualified electors of the council district voting at such run-off election shall be elected. Each candidate for election to the city council shall reside in the district he or she seeks to represent.
 - (c) With the exception of the initial terms set forth in subsection (d) of this section, councilmembers shall be elected to terms of four years and until their successors are elected and qualified on a staggered basis in alternate election cycles such that every two years two councilmembers are up for election.
 - (d) In order to assure staggered elections of the councilmembers, in the first election of the city council the terms for the candidates elected for Council Districts 2 and 4 shall expire upon the administration of the oath of office to their successors elected in the regular elections held in November, 2013, as provided in subsection (b) of section 2.02 of this Charter. The terms for the candidates elected for Council Districts 1 and 3 shall expire upon the administration of the oath of office to their successors elected in the regular elections held in November 2015, as provided in subsection (b) of section 2.02 of this Charter. Thereafter, a successor to each councilmember shall be elected at the November election immediately preceding the end of such councilmember's term of office and the term of each councilmember shall expire upon the administration of the oath of office to his or her successor.
 - (e) With the exception of the initial term of office, the mayor of the City of Brookhaven, with the powers and duties specified herein, shall be elected to a term of four years and until his or her successor is elected and qualified. The mayor shall be elected by a majority vote of the qualified electors of the city

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at large voting at the elections of the city. In the event that no candidate for mayor obtains a majority vote of the qualified electors of the city at large voting at the elections of the city, then a run-off election shall be held. The candidates receiving the two highest numbers of votes in the election shall be included in the run-off election and the candidate receiving the highest number of votes in the runoff of the qualified electors of the city at large voting at such runoff shall be elected. The term of the first elected mayor shall expire upon the administration of the oath of office to his or her successor elected in the regular election held in November 2015, as provided in subsection (b) of section 2.02 of this Charter. Thereafter, a successor to each mayor shall be elected at the November election immediately preceding the end of such mayor's term of office and the term of each mayor shall expire upon the administration of the oath of office to his or her successor.

Section 2.02. Mayor and councilmembers; terms and qualifications for office.

- (a) For all elections subsequent to the first election, the mayor and councilmembers shall serve for terms of four years and until their terms shall expire upon the administration of the oath of office to their successors. No person shall be eligible to serve as mayor or councilmember unless that person shall have been a resident of the City of Brookhaven for a continuous period of at least 12 months immediately prior to the date of the election for mayor or councilmember, shall continue to reside therein during that person's period of service, and shall continue to be registered and qualified to vote in municipal elections of the City of Brookhaven. In addition to the above requirements, no person shall be eligible to serve as a councilmember representing a council district unless that person has been a resident of the district such person seeks to represent for a continuous period of at least six months immediately prior to the date of the election for councilmember and continues to reside in such district during that person's period of service.
- (b) An election shall be held on the Tuesday after the first Monday in November, 2012, to elect the first mayor and city council. At such election, the first mayor and council shall be elected to serve for the initial terms of office specified in subsections (d) and (e) of section 2.01 of this Charter. Thereafter, the time for holding regular municipal elections shall be on the Tuesday next following the first Monday in November of each odd-numbered year beginning in 2013.
- (c) The number of consecutive terms an individual may hold a position as a councilmember shall be unlimited.
- (d) The number of consecutive terms an individual may hold ~~in~~ in the position of mayor any elected position within the City shall be limited to ~~two~~ three four-year terms and shall not include any partial term of office served as mayor. This section shall apply to any incumbent in office at the time the section becomes effective and all prior service of any incumbent shall be counted toward this term limit.
- (e) No person who has been convicted of a felony or a crime of moral turpitude shall be eligible for election or to serve as mayor or councilmember of the City of Brookhaven.
- (f) No person who was a member of the General Assembly at the time of the enactment of this Charter shall be eligible for election or to serve as mayor or councilmember of the City of Brookhaven during the first four years of the city's existence.

(2013 Ga. Laws (Act No. 308), p. 4439)

Section 2.03. Vacancy; filling of vacancies; suspensions.

- (a) Elected officials of the city cannot hold other elective or public offices. The elective offices of the city's government shall become vacant upon the member's death, resignation, forfeiture of office, or removal from office. The following shall result in an elected city official forfeiting his or her office:

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- (1) Violating the provisions of this Charter;
 - (2) Being convicted of, or pleading guilty or "no contest" to, a felony or a crime of moral turpitude; or
 - (3) Failing to attend one-third of the regular meetings of the council in a three-month period without being excused by the council.
- (b) The office of mayor shall become vacant upon the incumbent's death, resignation, forfeiture of office, or removal from office in any manner authorized by this Charter or the general laws of the State of Georgia. A vacancy in the office of mayor shall be filled for the remainder of the unexpired term by ~~a special election if such vacancy occurs 12 months or more prior to the expiration of the term of that office. If such vacancy occurs within 12 months of the expiration of the term of that office,~~ the city council or those members remaining who shall appoint a successor for the remainder of the term. This provision shall also apply to a temporary vacancy created by the suspension from office of the mayor. If more than 12 months remain in the unexpired term, a special election shall be held on the date of the next general election as established by the State of Georgia. Any person appointed to the office of mayor shall not be entitled to be shown on the ballot as the incumbent.
- (c) The office of a councilmember shall become vacant upon the incumbent's death, resignation, forfeiture of office, or removal from office in any manner authorized by this Charter or the general laws of the State of Georgia. A vacancy in the office of a councilmember shall be filled for the remainder of the unexpired term by ~~a special election if such vacancy occurs 12 months or more prior to the expiration of the term of that office. If such vacancy occurs within 12 months of the expiration of the term of that office,~~ the mayor who shall appoint a successor for the remainder of the term subject to the approval of the city council or those members remaining. This provision shall also apply to a temporary vacancy created by the suspension from office of a councilmember. If more than 12 months remain in the unexpired term, a special election shall be held on the date of the next general election as established by the State of Georgia. Any person appointed to the office of mayor shall not be entitled to be shown on the ballot as the incumbent.

Section 2.04. Nonpartisan elections.

Political parties shall not conduct primaries for city offices and all names of candidates for city offices shall be listed without party designation.

Section 2.05. Election votes.

The candidate for mayor who receives a majority vote of the qualified electors of the city at large voting at the elections of the city shall be elected. The candidates for Council Districts 1, 2, 3, and 4 who receive a majority vote of the qualified electors of Council Districts 1, 2, 3, and 4, respectively, voting at the elections of the city shall be elected.

Section 2.06. Applicability of general laws; qualifying; other provisions.

All elections shall be held and conducted in accordance with chapter 2 of title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended or otherwise provided by law. Except as otherwise provided by this Charter, the city council shall, by ordinance or resolution, prescribe such rules and regulations as it deems appropriate, including but not limited to the establishment of qualifying fees, to fulfill any options and duties under chapter 2 of title 21 of the O.C.G.A., the "Georgia Election Code," as now or hereafter amended or otherwise provided by law.

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Section 2.07. Compensation and expenses.

The annual salary of the mayor shall be \$~~2016~~,000.00 and the annual salary for each councilmember shall be \$~~162~~,000.00. Such salaries shall be paid from municipal funds in monthly installments. The mayor shall be provided an annual expense allowance of \$~~75~~,000.00 and each councilmember shall be provided an annual expense allowance of \$~~53~~,000.00 for the reimbursement of expenses actually and necessarily incurred by the mayor and councilmembers in carrying out their duties as elected officials of the city.

Section 2.08. Inquiries and investigations.

The city council may make inquiries and investigations into the affairs of the city and conduct of any department, office, or agency thereof and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Any person who fails or refuses to obey a lawful order issued in the exercise of these powers by the city council shall be punished as may be provided by ordinance.

Section 2.09. Meetings, oath of office, and mayor pro tempore.

- (a) The city council shall meet on the first working day in January immediately following each regular municipal election. The meeting shall be called to order by the mayor-elect and the oath of office shall be administered to the newly elected mayor and councilmembers collectively by a judicial officer authorized to administer oaths. The oath shall, to the extent that it comports with federal and state law, be as follows:

"I do solemnly swear (or affirm) that I will faithfully execute the office of [councilmember or mayor, as the case may be] of the City of Brookhaven, and will to the best of my ability support and defend the Constitution of the United States, the Constitution of Georgia, and the Charter, ordinances, and regulations of the City of Brookhaven. I am not the holder of any unaccounted for public money due this state or any political subdivision or authority thereof. I am not the holder of any office of trust under the government of the United States, any other state, or any foreign state which I by the laws of the State of Georgia am prohibited from holding. I am otherwise qualified to hold said office according to the Constitution and laws of Georgia. I have been a resident of my district and the City of Brookhaven for the time required by the Constitution and laws of this state and by the municipal Charter. I will perform the duties of my office in the best interests of the City of Brookhaven to the best of my ability without fear, favor, affection, reward, or expectation thereof."

- (b) Following the induction of the mayor and councilmembers, the city council, by a majority vote of the councilmembers, shall elect a councilmember to be mayor pro tempore, who shall serve for a term of two years and until a successor is elected and qualified. The number of successive terms an individual may hold a position as mayor pro tempore shall be unlimited.
- (c) The mayor pro tempore shall assume the duties and powers of the mayor during the mayor's temporary disability, suspension, or absence. If the mayor pro tempore is absent because of sickness or disqualification, any one of the remaining councilmembers, chosen by the councilmembers present, shall be clothed with all the rights and privileges of the mayor as described herein and shall perform the mayor's duties in the same manner as the mayor pro tempore.
- (d) The city council shall, at least once a month, hold regular meetings at such times and places as prescribed by ordinance. The city council may recess any regular meeting and continue such meeting on any day or hour it may fix and may transact any business at such continued meeting as may be transacted at any regular meeting.
- (e) Special meetings of the city council may be held on the call of either the mayor and one councilmember or three councilmembers. Notice of such special meetings shall be delivered to all councilmembers,

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the mayor, and the city manager personally, by registered mail, or by electronic means at least 24 hours in advance of the meeting. Such notice shall not be required if the mayor, all councilmembers, and city manager are present when the special meeting is called. Such notice of any special meeting may be waived by the mayor, a councilmember, or the city manager in writing before or after such a meeting and attendance at the meeting shall also constitute a waiver of notice. The notice of such special meeting shall state what business is to be transacted at the special meeting. Only the business stated in the call may be transacted at the special meeting.

Section 2.10. Quorum; voting.

- (a) ~~Three councilmembers~~The presence of any combination of 3 members of the City Council and the Mayor shall constitute a quorum and shall be authorized to transact business for the city council. Voting on the adoption of ordinances shall be taken by voice vote and the yeas and nays shall be recorded in the minutes, but on the request of any member, there shall be a roll-call vote. In order for any ordinance, resolution, motion, or other action of the city council to be adopted, the measure must receive at least three affirmative votes. No member of the city council shall abstain from voting on any matter properly brought before the city council for official action except when such councilmember has a conflict of interest which is disclosed in writing prior to or at the meeting and made a part of the minutes. Any member of the city council present and eligible to vote on a matter and refusing to do so for any reason, other than a properly disclosed and recorded conflict of interest, shall be deemed to have acquiesced or concurred with the members of the majority who did vote on the question involved. The mayor shall vote only in the case of a tie or in the case where his or her vote will provide the number of votes necessary for approval of a matter.
- (b) The following types of actions require an ordinance in order to have the force of law:
- (1) Adopting or amending an administrative code or establishing, altering or abolishing a department, office not specified in this Charter, or agency;
 - (2) Providing a fine or other penalty;
 - (3) Levying taxes;
 - (4) Granting, renewing, or extending a franchise;
 - (5) Regulating a rate for a public utility;
 - (6) Authorizing the borrowing of money;
 - (7) Conveying, leasing, or encumbering city land;
 - (8) Regulating land use and development; and
 - (9) Amending or repealing an ordinance already adopted.
- (c) The city council shall establish by ordinance procedures for convening emergency meetings. In an emergency, an ordinance may be passed without notice or hearings if the city council passes the ordinance by three-fourths' vote; provided, however, that the city council cannot in an emergency meeting:
- (1) Levy taxes;
 - (2) Grant, renew, or extend a franchise;
 - (3) Regulate a rate for a public utility; or
 - (4) Borrow money.

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Section 2.11. General power and authority of the city council.

- (a) Except as otherwise provided by law or by this Charter, the city council shall be vested with all the powers of government of the City of Brookhaven as provided by Article I of this Charter.
- (b) In addition to all other powers conferred upon it by law, the city council shall have the authority to adopt and provide for the execution of such ordinances, resolutions, rules, and regulations, not inconsistent with this Charter and the Constitution and the laws of the State of Georgia, which it shall deem necessary, expedient, or helpful for the peace, good order, protection of life and property, health, welfare, sanitation, comfort, convenience, prosperity, or well-being of the inhabitants of the City of Brookhaven and may enforce such ordinances by imposing penalties for violation thereof.

Section 2.12. Administrative and service departments.

- (a) Except for the office of city manager and the elected positions provided for in this Charter, the city council, by ordinance, may establish, abolish, merge, or consolidate offices not specified in this Charter, positions of employment, departments, and agencies of the city as it shall deem necessary for the proper administration of the affairs and government of the city. The city council shall prescribe the functions and duties of existing departments, offices, and agencies or of any departments, offices, and agencies hereinafter created or established; may provide that the same person shall fill any number of offices and positions of employment; and may transfer or change the functions and duties of offices, positions of employment, departments, and agencies of the city.
- (b) The operations and responsibilities of each department now or hereafter established in the city shall be distributed among such divisions or bureaus as may be provided by ordinance of the city council. Each department shall consist of such officers, employees, and positions as may be provided by this Charter or by ordinance and shall be subject to the general supervision and guidance of the mayor and city council.

Section 2.13. Prohibitions.

- (a) No elected official, appointed officer, or employee of the city or any agency or political entity to which this Charter applies shall knowingly:
 - (1) Engage in any business or transaction or have a financial or other personal interest, direct or indirect, which is incompatible with the proper discharge of official duties or which would tend to impair the independence of his or her judgment or action in the performance of official duties;
 - (2) Engage in or accept private employment or render services for private interests when such employment or service is incompatible with the proper discharge of official duties or would tend to impair the independence of his or her judgment or action in the performance of official duties;
 - (3) Disclose confidential information concerning the property, government, or affairs of the governmental body by which engaged without proper legal authorization or use such information to advance the financial or other private interest of himself or herself or others, except as required by law;
 - (4) Accept any valuable gift, whether in the form of service, loan, object, or promise, from any person, firm, or corporation which to his or her knowledge is interested, directly or indirectly, in any manner whatsoever in business dealings with the governmental body by which he or she is engaged. "Valuable" shall be an amount determined by the city council; provided, however, that the amount shall not exceed \$100.00;
 - (5) Represent other private interests in any action or proceeding against this city or any portion of its government; or

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- (6) Vote or otherwise participate in the negotiation or in the making of any contract with any business or entity in which he or she, or members of his or her immediate family, has a financial interest.
- (b) Any elected official, appointed officer, or employee who has any private financial interest, directly or indirectly, in any contract or matter pending before or within any department of the city shall disclose such private interest to the city council. "Private financial interest" shall include interests of immediate family. The mayor or any councilmember who has a private interest in any matter pending before the city council shall disclose in writing such private interest and such disclosure shall be entered on the records of the city council, and he or she shall disqualify himself or herself from participating in any decision or vote relating thereto. Any elected official, appointed officer, or employee of any agency or political entity to which this Charter applies who shall have any private financial interest, directly or indirectly, in any contract or matter pending before or within such entity shall disclose such private interest to the governing body of such agency or entity.
- (c) No elected official, appointed officer, or employee of the city or any agency or entity to which this Charter applies shall use property owned by such governmental entity for personal benefit, convenience, or profit, except in accordance with policies promulgated by the city council or the governing body of such agency or entity.
- (d) Any violation of this section which occurs with the knowledge, express or implied, of a party to a contract or sale shall render said contract or sale voidable at the option of the city council.
- (e) Except as authorized by law, no member of the city council shall hold any other elective city office or be employed by any city or county government during the term for which elected.

Section 2.14. Boards, commissions, and authorities.

- (a) All members of boards, commissions, and authorities of the city shall be appointed by the mayor subject to confirmation by the city council for such terms of office and such manner of appointment as provided by ordinance, except where other appointing authority, term of office, or manner of appointment is prescribed by this Charter or by applicable state law. Members of the Planning Commission, the Zoning Board of Appeals, and the Brookhaven Development Authority must be residents of the City of Brookhaven.
- (b) No member of any board, commission, or authority of the city shall hold any elective office in the city. Councilmembers and the mayor, however, may serve as ex officio members of such boards, commissions, or authorities, without a vote.
- (c) Any vacancy in office of any member of a board, commission, or authority of the city shall be filled for the unexpired term in the manner prescribed for original appointment, except as otherwise provided by this Charter or any applicable law of the State of Georgia.
- (d) No member of any board, commission, or authority shall assume office until he or she shall have executed and filed with the designated officer of the city an oath obligating himself or herself to faithfully and impartially perform the duties of his or her office, such oath to be prescribed by ordinance of the city council and administered by the mayor or a judicial officer authorized to administer oaths.
- (e) Any member of a board, commission, or authority may be removed from office for cause by a vote of a majority of the councilmembers in accordance with state laws.
- (f) Members of boards, commissions, and authorities may receive such compensation and expenses in the performance of their official duties as prescribed by ordinance.
- (g) Except as otherwise provided by this Charter or by applicable state law, each board, commission, or authority of the city government shall elect one of its members as chairperson and one member as vice chairperson for terms of one year and may elect as its secretary one of its own members or may appoint as secretary an employee of the city. Each board, commission, or authority of the city government may establish such bylaws, rules, and regulations not inconsistent with this Charter,

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ordinances of the city, or applicable state law as it deems appropriate and necessary for the conduct of its affairs, copies of which shall be filed with the designated officer of the city.

Section 2.15. Ordinance form; procedures.

- (a) Every proposed ordinance and resolution shall be introduced in writing and the city council shall have the authority to approve, disapprove or amend the same. An ordinance or resolution may be passed at the time it's offered for the first time.
- (b) The catchlines of sections of this Charter or any ordinance printed in boldface type, italics, or otherwise are intended as mere catchwords to indicate the contents of the section, and:
 - (1) Shall not be deemed or taken to be titles of such sections or as any part of the section; and
 - (2) Shall not be so deemed when any of such sections, including the catchlines, are amended or reenacted unless expressly provided to the contrary.
- (c) Furthermore, the article and section headings contained in this Charter shall not be deemed to govern, limit, or modify or in any manner affect the scope, meaning, or intent of the provisions of any article or section hereof.
- (d) The city council may, by ordinance or resolution, adopt rules and bylaws to govern the conduct of its business, including procedures and penalties for compelling the attendance of absent councilmembers. Such rules may include punishment for contemptuous behavior conducted in the presence of the city council.

(Ord. No. 2013-05-01, § 1, 7-23-2013)

Section 2.16. Submission of ordinances to the city clerk.

- (a) Every ordinance, resolution, and other action adopted by the city council shall be presented to the city clerk within 15 days of its adoption or approval. The city clerk shall record upon the ordinance the date of its delivery from the city council.
- (b) An ordinance or resolution that has been passed by the city council shall become effective on the date the ordinance is passed by the city council or on such other date as may be specified in the ordinance.