



November 17, 2022

Mayor John Arthur Ernst, Jr.  
Brookhaven City Council  
4362 Peachtree Road, NE  
Brookhaven, GA 30319

Re: Report of the 2022 Charter Review Commission

Dear Mayor Ernst and City Councilmembers:

As required by the City Charter and the Enabling Resolution establishing the Charter Review Commission, this correspondence constitutes our report and recommendations to the City Council for updates and amendments to our City's Charter. This Commission believes the following recommendations will serve to continue the City's progress, in this our 10<sup>th</sup> year of incorporation. We were honored to be asked to serve our City in this capacity. The tasks were challenging and the process engaging; but we feel we have completed our tasks as requested by the Council, the Administration, and the community.

As such, the Commission offers the following for consideration:

**1. Amplify the City's Existing and Aspirational Commitment to Diversity, Equity & Inclusion**

Brookhaven is understandably proud of its diverse citizenry and its well-earned reputation as a Welcoming City. Our designation as such, as well as prior work championed by Brookhaven residents, elected officials and administration staff through the Social Justice, Race, and Equity Commission (SJREC) empaneled by the Council in 2020 were important inputs into our discussion on how the City Charter could better reflect our existing and aspirational commitment to diversity, equity and inclusion. The Commission invited guest experts, including Rita Danish, former City Attorney for Cincinnati, Ohio, as and drew heavily on the findings and expertise of the SJREC and the National League of Cities and Civil League for guidance as to of how the Charter could reflect our commitment.

In honor of that commitment, our commission has recommended two specific amendments to our Charter. First, we believe the addition of an inclusive and welcoming Preamble to the Charter would be appropriate. The Preamble would indicate that the Council finds that diversity, equity, and inclusion are instrumental governmental goals so that the Charter should be read in a spirit that brings these principles into practice in the execution of the duties required and prompted by the Charter.

Accordingly, we recommend the Mayor and City Council exercise the City's Home Rule Powers and amend the Charter to provide, in a preamble,



We the people of Brookhaven, Georgia, continuously striving to ensure that our City represents our rich cultural diversity, under the constitution and laws of the state of Georgia, in order to secure the benefits of local self-government and to provide for an honest and accountable Council-Manager government have adopted this Charter and conferred upon the City the following powers, subject to the following restrictions, and prescribed by the following procedures and governmental structure. By this action, we secure the benefits of home rule and increased resident participation reflecting a welcoming environment, and to strive for equal opportunity among all those who call the City home by promoting social equity, improving efficiency and effectiveness, and providing for a responsive, responsible and cooperative government. We also recognize and aspire for a city where each individual shall have an equal opportunity to fully participate in the economic, cultural, and intellectual life of the city. We hold that the city will not discriminate on the basis of race, color, religion, national origin, gender, age, sexual orientation, gender expression, marital status, military status, or physical or mental disability. Therefore, be it resolved that this Charter seeks to further a government that advances justice and equity, inspires confidence, and fosters responsibility.

It is the intent of the Charter Commission, and our recommendation to the Mayor and City Council, that this Preamble shall represent a guiding principle for the governance of our City and the future we want our community to enjoy.

Second, in section 2.14 pertaining to Boards, Commissions, and authorities, the Commission recommends the addition of language that encourages diverse representation on these bodies to ensure they better reflect the community at large.

## **2. Continue to Ensure Strong Governance Continuity and Accountability**

The second issue discussed by the Commission related to our responsibility to assess the Charter through the lens of continuing the strong governance, continuity, and accountability of leadership within the City. Over the last decade, with more time and experience as a City, many lessons have been learned that suggest changes should be considered to good governance and the efficient operation of the City's business.

Brookhaven is a Council-Manager form of government. This means that the Council sets the seven goals and policies of the community, and the City Manager executes said goals and policies in the management of services and fiscal stewardship. However, the Mayor possesses substantial policy-making presence in their role as tie-breaker on the Council and Chief Executive Officer of the City. With these concepts in mind, The Charter Review Commission asks the Mayor and Council to consider three changes to the Charter.

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- a. Removal authority of Mayor should require Council confirmation in the same manner the appointment authority currently requires*

The Charter provides the Mayor the power to appoint various City Officers and members of City Boards and Commissions. However the Charter is silent about the power to remove. The Commission believes this is an oversight that can be easily remedied. To do so, however, would change the power of the Mayor, and, therefore, may require the approval of local legislation making such change by the Georgia General Assembly. Accordingly, the Charter Commission recommends that the City Council enact a resolution asking the Brookhaven General Assembly Delegation (or to take appropriate Home Rule action if deemed appropriate) to introduce legislation to require the City Council to confirm any efforts by a Mayor to remove an incumbent of an appointed office or any member of a board or commission. This change would take effect immediately upon approval by the Governor.

The changes recommended are as follows (additions are shown in **red**, deletions are shown as ~~strikethrough~~):

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. The appointment of any member to any board, commission, or authority of the City will strive to reflect the rich cultural diversity of the City. **The removal of any member by the Mayor shall also require concurrence of the City Council.** Members of the Planning Commission, the Board of Appeals, and the Brookhaven Facilities Authority must be residents of the City of Brookhaven.

Section 3.08. – City Attorney

- (a) The Mayor shall appoint the City Attorney with such Assistant City Attorneys as may be deemed appropriate subject to confirmation by the City Council and shall provide for the payment of such attorney for services rendered to the City. The rates or salary paid to any City Attorney or Assistant City Attorney shall be approved in advance by the City Council. The City Attorney shall be responsible for representing and defending the City in all litigation in which the City is a party; may be the prosecuting officer in the municipal court; shall attend the meetings of the city council as directed; shall advise the City Council, Mayor, other officers, and employees of the City concerning legal aspects of the city's affairs; and shall perform such other duties as may be required by virtue of his or her position as City Attorney. The City Attorney shall review all contracts of the City but shall not have the power to bind the City.

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- (b) In the event the Mayor seeks or wishes to remove or replace the City Attorney, such change shall require a consenting majority vote of the City Council to give effect to the removal.

### Section 3.09. – City Clerk

The Mayor may appoint a City Clerk subject to confirmation by the City Council to keep a journal of the proceedings of the City Council; to maintain in a safe place all records and documents pertaining to the affairs of the city; and to perform such duties as may be required by law or ordinance or as the Mayor or City Manager may direct. In the event the Mayor seeks or wishes to remove or replace the City Clerk, such change shall require a consenting majority vote of the city council to give effect to the removal.

#### *b. Change in structural term limits available to a Mayor*

Brookhaven is well-positioned to be a regional leader in an effort to marshal the resources and collaboration needed to meet the current and future demands of the City. Transportation, greenspace, public safety and first-class public services represent ongoing opportunities to improve the quality of life offered. Brookhaven has also been very successful in competing and receiving diverse funding to support strategic initiatives of the city without stretching the tax base. Our business acumen as a City, strong track record of accountability and efficiency and stable leadership have all played critical roles in the City's ability to situate itself as a worthy investment of funds and cutting-edge projects.

For example, on October 25, Senator Warnock confirmed the award of \$750,000 in federal funding over five years to support Brookhaven's Community Oriented Police Services (COPS) program. Over the last four years, the City has obtained over \$55,000,000 in other Federal funding for City initiatives and projects. The City has demonstrated its innovation and commitment to sustainability (proposed by the Mayor, supported by the Council, and executed by the Administration) by building a Public Safety Building heated and cooled by geothermal means, purchasing and placing in service the first fully electric police car east of the Mississippi River, establishing in the City's zoning code a requirement that new developments and commercial spaces establish and maintain EV charging stations, and establishing a replacement protocol devoted to hybrid or fully electric vehicles as the City's fleet ages.

Additionally, the position of Mayor has led efforts, still in their infancy, with mayors in the northern arc of Atlanta to push for MARTA connections that flow between the MARTA Blue Line and the Battery. The position of Mayor has spearheaded policy discussions within the DeKalb Municipal Association seeking to resolve disputes with DeKalb County. But all of these initiatives take time and require a steady, stable leadership presence. As such, and in line with many municipalities and governing units across the state of Georgia, the Commission recommends the addition of one term, amending the current two term limit currently set forth in the Charter. However, the Commission feels strongly that the recommendation is simply one of

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the removal of a structural term limit and by no means undermines or impacts the natural term limit cycle which occurs with elections every four years. The choice to make this structural change resides with the General Assembly. This Commission believes this modest amendment provides for an increased opportunity for stable governing leadership with an additional term.

In line with this recommendation, the Charter Commission recommends to the Mayor and City Council that they seek state Legislative authority to amend Charter Section 2.02(d) to allow for three consecutive terms of the Mayor and that following the service of three terms or a total of 12 years in office, after which the office holder is no longer eligible to serve as Mayor. The Charter Commission further recommends that the additional term as Mayor not apply to any incumbent or any prior holder of the Office of Mayor.

### **3. Amend Section 1.03(37) or Section 5.08 to provide adequate revenue to provide for a balanced budget**

The Commission spent significant time hearing from the Administration on the fiscal health and prospects of financial sustainability of the City. The Commission is concerned about the ability of the City to balance the budget in years to come. For context, a bit of history is required to understand this circumstance. Brookhaven's General Maintenance and Operations millage rate makes up approximately 7.0% of the total DeKalb County tax bill. On average, a family in Brookhaven pays about \$550 per year for world-class parks, paved streets, outstanding police services, and all of the other benefits enjoyed by Brookhaven citizens.

When the City was incorporated by the Legislature and a referendum on incorporation called, the Charter included both a cap on the General Fund Maintenance and Operations millage rate of 3.35 mills (or \$.00335) on the assessed value of real property in the City and a Homestead valuation freeze that provided for no increase in base valuation due to increases in value. Ordinarily, without that freeze, the actual taxes assessed on a property increase year-over-year due to the increased growth in value of a home, even if there is no increase in the City's adopted millage rate. The combination of these two fiscal handcuffs create a financially insecure future. As a result, the City has not experienced growth in its residential tax base sufficient to meet staffing and other fiscal demands of City government expected Brookhaven residents.

The City has maintained a 2.74 millage rate since 2015 and that millage rate remains among the lowest in DeKalb County and the region (excluding those cities without millage rates). But inflation affects cities like it affects families. Salary and benefit costs to attract and retain quality employees have increased. Additionally, the cost of fuel and utilities are on the rise. Demands for expanding services cause pressure on already stretched local budgets. The Commission recognizes that this is not a problem to be addressed down the road. In fact, this very budget year we are facing the need to shore up our budget. The 2023 proposed budget includes \$1.0 million in reserve funding to balance the budget because tax revenues in the present system are insufficient to provide the services and facilities Brookhaven residents expect.

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The Commission explored myriad ways to address this critical issue, including a full financial analysis of the forces at play and strategies to meet the goal of ensuring Brookhaven has the revenue base needed to maintain its reputation and quality of life, as well as steward the financial resources of those who call it home with a respectful approach. After assessing the needs and understanding the situation, as well as exploring how other similar-sized cities are addressing this issue, the Commission focused on two proposals from the Administration on how to address this challenge: (1) raise or eliminate the General Maintenance and Operations millage cap in Section 1.03(37), or (2) modify the Homestead Exemption Valuation Freeze such that at some point the appreciated value of a residence would be taxed and not frozen in perpetuity. Both would require a referendum to take effect and each proposal has its advantages and disadvantages.

Raising or eliminating the General Maintenance and Operations millage cap is easy, clear, and understandable. Brookhaven has never imposed a General Maintenance and Operations millage at or near its cap since 2015. Nonetheless, if the homestead valuation freeze remains in place, the ability of the City to continue to operate at its current pace and current level of service is in jeopardy. Raising or eliminating the General Maintenance and Operations millage cap would leave taxation rates to elected officials. The option of raising the General Maintenance and Operations millage will affect 100% (17,639 parcels) of the City.

By contrast, modifying the Homestead Valuation Freeze Exemption is complicated and challenging. Under section 5.08 of the Charter, a residential property that is subject to a valid Homestead Exemption, has the value of the property frozen at the value established for the year before the Exemption was granted. For example, a home purchased in 2015 that qualified for a Homestead Exemption in 2016, would lock in a city ad valorem assessment at that rate forever. Similarly, if a home owned at the time the City was incorporated, the value is frozen at the 2011 fair market value. Over 87% of Brookhaven's tax parcels are residential properties. With no growth, or very little growth, in this large portion of the City's tax base, the ongoing financial health of the City is in jeopardy without a modest and practical change.

In the Administration's proposal, the Homestead Valuation Freeze would remain in place until such time as the fair market value of the property reached some point established by the Council (e.g. 175% of the base appraised value). Once that value is attained, the owner would not see any additional increase in the freeze exemptions and their property tax bill specifically for the City portion will begin to increase on an annual basis. In real numbers, that means that a home with a base tax value of \$500,000 in 2012 would not pay additional taxes until it reached a value of \$875,000. Then, only that portion of the value in excess of \$875,000 would be added to the base tax value, not the entire value. The Administration anticipates this change (freeze capped at 175% of base value) will generate about \$800,000 in additional tax revenues for the City to fund the maintenance and operations of the general fund. The option of capping the Homestead Valuation Freeze Exemption will affect approximately 13% (2,237 parcels) in the City based on an analysis tool provided by FLO Analytics.

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Given the presentation made by the City Administration, the Charter Review Commission asks Council to consider the second alternative proposed, amending how the Homestead Valuation Freeze Exemption is calculated rather than raising or eliminating the General Maintenance and Operations millage cap. It is our opinion this option provides for the financial remedy necessary as well as impacts homeowners in a more fair manner. Therefore, the Commission recommends the City Council submit a request to the Local State Delegation for local legislation that will amend Section 5.08 of the City Charter to revise the Homestead Valuation Freeze Exemption and allow properties whose fair market value exceeds 175% of their freeze value to be taxed on the excess value. The City Attorney should be delegated the authority to work with Legislative Counsel at the General Assembly to give effect to this recommendation.

#### **4. Modernize the Salaries and Expenses for the Mayor and Councilmembers**

The 2017 Charter Commission discussed the question of Mayor and Councilmember salaries at length. The Administration and City Attorney raised the issue again with this Commission. Currently, the salaries and expenses are capped in Section 2.07 of the Charter. The Mayor receives \$16,000 per year and each councilmember receives \$12,000 per year. Expenses are limited to \$7,000 and \$5,000 respectively. These salaries act as a bar to broader participation or opportunities for participation as elected leaders by many citizens.

The Commission finds these to be artificially low, and there is no rational basis for their current levels. While the elected positions are intended to be part-time, even part-time work involves time away from family, work, and other opportunities. Additionally, while members did agree and volunteer to serve their community, the compensation for the hours the work requires is well below the Federal Minimum Wage.

The City has a robust internal control system that restricts what types of expenses are able to be reimbursed. It makes more sense to bring the elected body within the City's ordinary operating policies rather than having the Charter artificially limit how and what the Elected Members can be reimbursed for.

Accordingly, the Charter Commission recommends the Council exercise its Home Rule authority to revise Section 2.07 of the Charter to remove the expense caps for Elected Officials. Furthermore, this Section of the Charter should be revised as follows:

The annual salary of the mayor shall be set at 80% of the base salary of a member of the DeKalb County Commission (without supplement or increases for training) and the annual salary for each councilmember shall be set at 60% of the base salary of a member of the DeKalb County Commission (without supplement or increases for training).

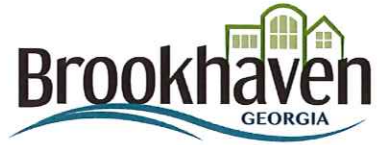
The remainder of the section should be repealed. At those percentages based on current base salaries for DeKalb County Commissioners, the annual salary for the mayor would be about

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\$53,600 and about \$40,200 for councilmembers. The Commission recognizes that no change in compensation for elected officials can take place until after the next municipal election in 2023.

**Conclusion**

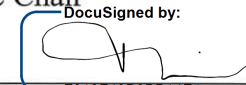
It has been our pleasure and privilege to serve the City of Brookhaven as members of the Charter Commission. We look forward to a discussion on any of our recommendations as time and the Council's agenda allows or permits.

Respectfully,

  
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Jennifer Owens  
Chair

  
\_\_\_\_\_  
Will Hammil  
Vice Chair

  
\_\_\_\_\_  
Conor Sen

DocuSigned by:  
  
\_\_\_\_\_  
Tywana Minor

  
\_\_\_\_\_  
Bryan Ramos

cc: Brookhaven General Assembly Delegation  
Brookhaven Administration