

ORDINANCE AMENDING CHAPTER 2, OF THE CODE OF ORDINANCES OF THE CITY OF BROOKHAVEN, GEORGIA

- WHEREAS, the Mayor and Council of Brookhaven are charged with the protection of the public health, safety and welfare of the citizens of the Brookhaven; and
- WHEREAS, pursuant to Section 1.03(b) of the Charter of the City of Brookhaven, inter alia, the City of Brookhaven has the power 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; and
- WHEREAS, pursuant to Section 1.03 (b) (9) the Charter of the City of Brookhaven, inter alia, the City of Brookhaven has the power 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; and
- WHEREAS, the Mayor and Council of the City of Brookhaven hereby find that regulating, prohibiting and/or defining certain conduct as set forth both below will further the goals set for in the Charter and protect the public health, safety and welfare of the citizens of Brookhaven.

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia, and it is hereby ordained by authority of same, is hereby amended by striking said section in its entirety and substituting in lieu thereof a new Section 2.401 of Chapter 2, Administration, Article XI. Code of Ethics to read as follows:

CHAPTER 2 – ADMINISTRATION

ARTICLE XI. CODE OF ETHICS

Sec. 2.401—Definitions

- (a) Appointee shall be any person appointed by the City Council or Mayor who holds office or any person appointed by the mayor and council of the City to serve on (1) the planning commission of the City; (2) any board or commission of the City having quasi-judicial authority; and (3) any authority created by the City, either individually or jointly with other local governments pursuant to Georgia law.
- (b) City Councilmember shall be any person who is an elected member of the City Council, including the Mayor.

- (c) City staff shall be any person who is a full-time or part-time employee of the City, as well as of any independent contractor contracted to perform specific duties for, and on behalf of, the City, including the full-time or part-time employee of such independent contractor.
- (d) Family member means the spouse, parent, child, grandchild, sibling, parent of a spouse, spouse of a sibling, spouse of a child, stepsibling, stepchild or stepparent of a City Councilmember or an appointee.
- (e) Financial interest means the following: (i) funds received by the Member from the other person or entity during the previous 12 months either equal to or in excess of (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or (b) ten percent of the Member's gross income during that period, whichever is less; or (ii) the Member is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.
- (f) Government or City shall be construed to mean the City of Brookhaven, Georgia
- (g) Members shall include City Councilmembers and Appointees.
- (h) Substantial interest means the following: (i) the direct or indirect ownership of 25% of the assets or of the ownership interests in of any business or property; (ii) the holder of any evidence of indebtedness of any business for borrowed money; or, (iii) any director, manager, trustee, officer or employee of any business (other than employees of a business registered as a publicly traded company under the Securities Act of 1934).

Sec 2.402—Prohibitions

All Members shall meet the following standards:

- (a) Compliance with the law

Members shall comply with all laws of the United States, the State of Georgia, and the City in the performance of their public duties. These laws include, but are not limited to: the United States and Georgia constitutions; laws pertaining to conflicts of interest, elections, campaigns, financial disclosures, employer responsibilities, and open processes of government; and City ordinances and written policies.

- (b) Policy role of Members

Members shall respect and adhere to the structure of government of the City as outlined in the City's Charter and policies and procedures. In this structure, the City Council determines the policies of the City with the advice, information and analysis provided by the public, boards, committees, commissions, and City staff. Members shall not direct the activities of City staff, interfere with the day-to-day administrative functions of the City or the professional duties of the City staff, nor impair the ability of City staff to implement City Council policy decisions.

(c) Independence of boards, committees and commissions

Because of the value of the independent advice of boards, committees and commissions to the public decision-making process, City Councilmembers shall refrain from using their position to influence unduly the deliberations or outcomes of board, committee and commission proceedings of which they are not members. Members shall also refrain from appearing or speaking on behalf of themselves or third parties in front of any board, committee or commission of the City; however, this prohibition shall not prevent (i) a Councilmember from appearing or speaking on behalf of the City in front of an independent authority or commission of the City created by the General Assembly as its own political subdivision, (ii) Members from speaking on behalf of the City board, committee, commission or council on which they serve when such City board, committee, commission or council has expressly authorized and appointed such Member to speak on its behalf or (iii) a Member from serving on more than one board, committee or commission of the City.

(d) Acceptance of gifts, benefits or remuneration

(i) Members and family members shall not solicit or accept directly or indirectly anything of value from any person, corporation, or group which:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the City, unless: a Member's or family member's contractual relationship with such person, corporation, or group existed prior to the City's contractual relationship or prior to the Member's election or appointment to office; the Member, if in office at the time the contractual, business or financial relationship came before the City for consideration, disclosed such relationship or, if not in office at such time, has immediately disclosed the relationship to the City after being elected or appointed to office and becoming aware of the City's relationship with such person, corporation or group; the Member abstained from discussion of the City's consideration of entering a contract with such person, corporation, or group or competing vendor; the Member abstained from voting on any matter related to the relationship between such person, corporation, or group or the subject contract or services; and the Member did not make personal use of any official non-public information, as prohibited by Section (k) hereof;

(2) In exchange for the thing of value, seeks to have a Member exercise a matter of discretion in his or her favor; or

(3) In exchange for the thing of value, seeks to have interests which may be affected by the performance or nonperformance of the official duty of the Member.

(ii) Members and family members shall not directly or indirectly request, exact, receive, or agree to receive a gift, loan, favor, promise, benefit or thing of value for him/herself or another person if:

(1) It could reasonably be considered to influence the Member in the future, and the Member is involved in any official act or action which results in a pecuniary benefit for the donor or lender which is not available to the public at large; or

(2) It could reasonably be considered to influence, benefit or reward the Member, and the Member recently has been, or is now or within six (6) months in the future, involved in any official act or action which results in a pecuniary benefit for the donor or lender which is not available to the public at large.

(iii) The above prohibitions shall not apply in the case of:

(1) Occasional nonpecuniary gift of insignificant trinkets or gifts such as a calendar, memento or pen received in the normal course of business with a value of less than one hundred dollars (\$100.00) and admission to and or consumption of food and beverages at a breakfast, lunch, dinner, function or event;

(2) Award publicly presented in recognition of public service;

(3) Transaction authorized by and performed in accordance with O.C.G.A. § 16-10-6 as now or hereafter amended;

(4) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such loan or financial transaction; or

(5) Campaign contributions made and reported in accordance with Georgia laws.

(6) Any gift, loan, favor, promise or thing of value from a Family member.

(e) Conflict of Interest

(i) A Member may not participate in a vote or decision on a matter affecting a family member or any person, entity, or property in which the Member or family member has a financial interest or substantial interest.

(ii) A Member who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.

(iii) Where the interest of a Member in the subject matter of a vote or decision is remote or incidental, the Member may participate in the vote or decision but should disclose the interest.

(f) Use of Public Property

A Member shall not use City property of any kind for other than officially approved activities, nor shall he or she direct City staff to use such property for these purposes.

(g) Coercion by Members

A Member shall not use his or her position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or her or a family member, or those with whom a Member has a financial interest or substantial interest.

(h) Voting in matters of personal interest

A Member shall not vote on an ordinance or amendment for a specific item in a City Council meeting that would directly affect his or her interest in any business where he or she has a financial interest or a substantial interest. Provided, however, that in the event of an ordinance of general application or a matter of City-wide application, or in the event such vote would be proper under

the City Charter such Member shall disclose such interest and, following such disclosure, shall be allowed to vote on such matter and such vote shall not constitute a violation of these rules and shall not be the subject matter of an ethics complaint hereunder.

(i) Unauthorized use of City staff

A Member shall not use his or her superior position to unduly pressure or request or otherwise require a member of the City staff to:

- (i) Do clerical work on behalf of a family member, business, social, church or fraternal interests;
- (ii) Purchase goods and services to be used for personal, business or political purposes; and,
- (iii) Work for him or her personally without offering him or her just compensation.

(j) Restrictions on contracts with former Members

The City shall not enter into any contract with any Member or business in which any Member has a financial interest or substantial interest for a period of 12 months from the date the Member ceases to be a Member, unless the contract is awarded by a competitive bid pursuant to a request for proposal, invitation to bid or pursuant an invitation to negotiate after the conduct by the City of a request for qualifications to which no less than three (3) persons are proposers/submitters.

(k) Improper Use of Official Non-Public Information

Members shall not directly or indirectly make use of, or permit others to make use of, official information, which at the time of its disclosure is not subject to being made available to the general public, for any purpose, including without limitation, the purpose of furthering a private interest regardless of whether the private interest belongs to the Member or a third party.

(l) Unauthorized Attempts to Bind the City

Members shall not order any goods and services for the City without prior official authorization for such an expenditure, nor shall Members obligate or attempt to obligate the City nor give the impression of obligating the City without proper prior authorization to purchase or otherwise be liable for any goods, services or property.

(m) Improper Influence in City Judicial Matters

No Member shall attempt to unduly influence the outcome of a case before the Municipal Court of the City of Brookhaven nor shall any Member engage in ex parte communication with the City Solicitor or any municipal court judge of the City of Brookhaven on any matter pending before the Municipal Court of the City of Brookhaven.

(n) Retaliatory Action Against City Employees

No Member shall attempt to influence or take any adverse employment action against a City employee where such City employee has provided truthful information about such Member or any other Member, including any information that forms a part of a Complaint or Answer submitted under this Code of Ethics or which is provided pursuant to an investigation or hearing conducted in accordance with this Code of Ethics.

Sec. 2.403—Receipt of Complaints

(a) All complaints against Members shall be filed with the city clerk, provided, however, to discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a Member, whether currently serving as a Member or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.

(b) No action may be taken on any complaint which is filed later than one (1) year after a violation of this Code of Ethics is alleged to have occurred, and a complaint alleging a violation must be filed within six (6) months from the date the complainant knew or should have known of the action alleged to be a violation; such limitation periods to be measured from the date of the last act occurring in furtherance of such violation. No proceedings under this article shall be instituted or prosecuted after the earlier of: (i) the expiration of the term of office of the person complained against; or (ii) the resignation, death, vacancy, disqualification or withdrawal from office of the person against whom a complaint is filed.

(c) No action may be taken on any complaint which arises out of substantially the same facts or circumstance which have previously served as the basis for a complaint pursuant to this Ordinance.

(d) A separate complaint shall be filed for each person alleged to have engaged in any activity violating this Ordinance even if the allegations arise from the same factual basis. Each complaint shall state: (i) a separate count for each alleged violation; (ii) the specific section of state law, the City Charter, or this Ethics Ordinance alleged to be violated for each count; (iii) with specificity, the facts which are alleged to constitute the violation; and (iv) the documentary evidence which the charging party possesses. Copies of said documentary evidence shall be attached to the complaint as exhibits.

(e) All complaints shall contain an oath that the facts set forth therein are true and correct to the best of the complainant's knowledge in substantially the following form:

"STATE OF GEORGIA
COUNTY OF DEKALB AFFIDAVIT

Personally appeared before the undersigned officer duly authorized to administer

oaths, (Name of person filing complaint), who on oath deposes that the statements in the foregoing Complaint are true and correct to the best of his/her knowledge and belief. The affiant further acknowledges that false statements made in this application may result in a prosecution against them for false swearing, a felony under O.C.G.A. 16-10-71.

(Signature of person filing
complaint)

Sworn to and subscribed
before me this _____ day of _____, 20_____.

Notary Public"

- (f) Upon receipt of a complaint, the City Clerk will deliver a copy of the complaint to the City Manager and the City Attorney.

Sec. 2.404--Appointment of Hearing Officer, Service of Complaint, Burden of Proof

(a) All complaints filed hereunder shall be heard before a Hearing Officer who: (i) shall be a competent attorney at law of good standing in his or her profession, (ii) shall have at least five (5) years' experience in the practice of law, and (iii) shall not maintain an office within a ten (10) mile radius of the City of Brookhaven, Georgia. The City Clerk shall maintain a listing of no less than five (5) qualified attorneys to serve as a Hearing Officer pursuant to this section. Upon receipt of a properly verified complaint, the City Clerk shall draw names randomly from the listing of qualified Hearing Officers and appoint the first one who is available to serve in the matter. Once a Hearing Officer is appointed, no Member shall communicate with or otherwise contact the Hearing Officer, except as authorized herein, unless such Member is the complainant or the Member charged in the Complaint; however, no party to a Complaint shall engage in ex parte communications with the Hearing Officer.

(b) Original pleadings shall be filed with the City Clerk and the City Clerk shall cause the complaint to be served on the Member charged as soon as practicable but in no event later than seven (7) calendar days after receipt of a verified complaint. Service may be by personal service, by certified mail, return receipt requested or by statutory overnight delivery.

(c) In all proceedings under this section, the burden of proof shall be on the complaining party. Further, the quantum of proof required to establish a violation under this Ordinance shall be beyond a reasonable doubt.

Sec. 2.405—Hearing

(a) The Member charged in the Complaint shall have fifteen (15) days to file an answer to the complaint provided; however, the Member charged shall have no obligation to file an answer to any complaint.

(b) Upon the expiration of the fifteen (15) day answer period, the Hearing Officer shall review the complaint and answer, if any, to determine: (i) whether the complaint is in conformity of the requirements of Sec. 2-403 above, (ii) whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, patently unfounded, or (iii) whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this Ordinance.

(c) If the complaint fails based upon the requirements of the foregoing subsection (b), the Complaint shall be dismissed stating the basis for said dismissal. If the dismissal is based upon the failure to comply with Sec. 2.403(d) or (e), the Complaining party shall have fifteen (15) days to refile the complaint correcting the defect. If the corrected complaint is not filed within said fifteen (15) day period, the provisions of Sec. 2-403(c) shall apply to the complaint. If the complaint as corrected otherwise fails, the provisions of Sec. 2-403(c) shall apply to the complaint.

(d) Upon a determination that the complaint should not be dismissed pursuant to the foregoing subsection (c), the Hearing Officer shall be empowered to collect evidence and information concerning any complaint and to add the findings and results of its investigations to the file containing such complaint. In furtherance of this investigation, the Hearing Officer may:

(i) First, seek such further information from the complainant or the Member charged through inquiry or written questions, provided, however the Member charged shall have no obligation to answer any inquiries; and make a further determination as to whether the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this Ordinance in accordance with Sec. 2-405(b) above. If it is determined that the complaint should not be dismissed pursuant to this subsection, then the provisions of Sec. 2-405(d)(ii) below shall apply; or

(ii) Conduct a hearing in accordance with the Administrative Hearing Procedures, as adopted by resolution by Council, regarding the allegations set forth in the complaint. At any hearing, the Member who is the subject of inquiry shall have the right: (i) to representation by counsel at all stages of these proceedings, (ii) to written notice of the hearing at least ten (10) calendar days before the first hearing, (iii) to hear and examine the evidence and witnesses, (iv) to not testify, and (v) to submit evidence and call witnesses to oppose or mitigate the allegations. In all hearings held under this section, the rules of evidence applicable in civil cases shall apply.

(e) All investigations under this section shall be completed within forty-five (45) days of the filing of the complaint. Should the investigation not be completed in said period, the complaint will be deemed dismissed as a failure to state facts sufficient to invoke the disciplinary jurisdiction of the City Council. Within seven (7) days of the completion of the investigation, the Hearing Officer shall:

(i) dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of the City Council, or
(ii) prepare a report of findings and recommendations to the Mayor and City Council.

(iii) Should the Hearing Officer determine to submit a report in the matter, the report shall consist of: (1) a written finding of facts; (2) a determination that the complaint establishes beyond

a reasonable doubt that a violation has been committed, and if so, the specific violation and evidence supporting the same, and (3) a recommendation regarding the punishment for such violation.

(iv) Any person violating any provision of this article is subject to:

- (1) Public or private reprimand or censure by the city council
- (2) Request for resignation by the city council
- (3) Removal from office in accordance with all applicable state and local laws.

(v) The Hearing Officer's written determination of findings and recommendations shall be delivered to the City Clerk who shall provide a copy to the City Manager and the Mayor and Council and serve a copy on the complainant and Member charged by personal service, by certified mail, return receipt requested or by statutory overnight delivery. Such findings shall not be final until approved by vote of the City Council, as provided in Sec. 2.406 below.

Sec. 2.406—Report to Mayor and Council.

(a) Upon receipt of findings and recommendations from the Hearing Officer, the Councilmembers may:

(i) by simple majority accept the Findings and Recommendations of the Hearing Officer.

(ii) by simple majority accept the findings of fact and reject the recommended discipline, instead substituting its own discipline.

(iii) by a supermajority consisting of a majority of those present forming a quorum, plus one, reject the findings and recommendations and either: (1) dismiss the complaint, or (2) conduct its own hearing in accordance with Sec. 2-405 hereof. Upon the completion of such hearing, the Findings and Recommendations of the Mayor and Council shall be binding.

(b) If the subject of the complaint is the Mayor or any City Councilmember, he or she will not be allowed to vote pursuant to this section or participate in any hearing held pursuant to this section other than as set forth and allowable by the Member charged, nor shall such position be counted for the purposes of establishing a quorum.

(c) Upon a final judgment and certification of the minutes of the meeting disposing of the matter, the City Clerk shall serve the respondent with a copy of the certified minutes and Findings and Recommendations by personal service, certified mail (return receipt requested) or by Federal Express or other overnight delivery service.

Sec. 2-407--Right To Appeal

(a) Any Member or complainant adversely affected by the findings or recommendations of the City Council may obtain judicial review of such decision as provided in this Section.

(b) An action for judicial review may be commenced by filing an application for a writ of certiorari in the Superior Court of DeKalb County within thirty (30) days after the final action on a complaint pursuant to this Ordinance. The filing of such application shall act as supersedeas.

Repeal of Conflicting Provisions. All ordinances, parts of ordinances, or regulations in conflict herewith are repealed.


Severability. Should any court of competent jurisdiction declare any section of this Ordinance invalid or unconstitutional, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof, which is not specifically declared to be invalid or unconstitutional.

The provisions of this Ordinance shall become and be made a part of The Code of the City of Brookhaven, Georgia, and the sections of this Ordinance may be renumbered to accomplish such intention.

SO ORDAINED AND EFFECTIVE, this the 27th day of May, 2013.


SO ORDAINED, this 27th day of May, 2014.

APPROVED:



J. Max Davis, Mayor

ATTEST:


Susan Hiott, City Clerk

APPROVED AS TO FORM:



Thompson Kurrie, Jr., City Attorney

