

CITY OF BROOKHAVEN, GEORGIA

CITY COUNCIL MEMBERS

J. Max Davis, Mayor



Rebecca Chase Williams – District 1

Jim Eyre – District 2

Bates Mattison – District 3

Joe Gebbia – District 4

CITY COUNCIL

Regular Meeting

FEBRUARY 12, 2013

7PM

Oglethorpe University, Lupton Auditorium, 4484 Peachtree Road Northeast, Brookhaven, GA

A) INVOCATION

B) CALL TO ORDER – Mayor Davis

C) ROLL CALL – City Clerk Susan Hiott

D) PLEDGE OF ALLEGIANCE –

E) OPENING REMARKS – Mayor Davis

F) MINUTES –

- January 8, 2013 Regular Council Meeting Minutes
- January 14, 2013 Special Called Meeting Minutes
- January 14, 2013 Public Hearing Meeting Minutes
- January 15, 2013 Public Hearing Meeting Minutes
- January 15, 2013 Special Called Meeting Minutes
- January 22, 2013 Regular Council Meeting Minutes

- I am proofing this weekend.

G) PUBLIC COMMENT –

H) CONSENT AGENDA

I) ANNOUNCEMENTS

J) REPORTS AND PRESENTATIONS

K) OLD BUSINESS

1. ACTION ITEM: Consideration and Approval of CBeyond Contract (*Tabled from 1/22/13 Meeting*)

L) NEW BUSINESS

- 1. ACTION ITEM: Consideration and Approval of City of Brookhaven Code Compliance Sweeps and Inspections Policy**
- 2. Consideration and Approval of an One Read Ordinance 02013-02-01 Property Maintenance and Housing Standards, Chapter 18 Nuisances with an effective date of April 16, 2013**

AN ONE READ ORDINANCE TO ADOPT AND APPROVE CHAPTER 18: NUISANCES AND PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF BROOKHAVEN, GA; TO BE REFERENCED IN THE FUTURE AS CHAPTER 18: NUISANCES

- 3. Consideration and Approval of First Read Ordinance 02013-02-02 Property Maintenance and Housing Standards, Chapter 18 Nuisances with an effective date of April 16, 2013**

AN ORDINANCE TO ADOPT AND APPROVE CHAPTER 18: NUISANCES AND PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF BROOKHAVEN, GA; TO BE REFERENCED IN THE FUTURE AS CHAPTER 18: NUISANCES (First Read)

- 4. Consideration and Approval of an One Read Ordinance 02013-02-03- Providing for the Amendment of Chapter 15, Licenses, Permits and Miscellaneous Business Regulations, Amending Article II Business Occupation Tax**

AN ONE READ ORDINANCE PROVIDING FOR THE AMENDMENT OF THE CODE OF ORDINANCES OF THE CITY OF BROOKHAVEN, GEORGIA, OF CHAPTER 15 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS BY AMENDING ARTICLE II BUSINESS OCCUPATION TAXES

- 5. Consideration and Approval of First Read Ordinance 02013-02- 04 – Providing for the Amendment of Chapter 15, Licenses, Permits and Miscellaneous Business Regulations, Amending Article II Business Occupation Tax**

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF THE CODE OF ORDINANCES OF THE CITY OF BROOKHAVEN, GEORGIA, OF CHAPTER 15 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS BY AMENDING ARTICLE II BUSINESS OCCUPATION TAXES (First Read)

6. Consideration and Approval of One Read Ordinance 02013-02 –05 amending Chapter 4 – Alcoholic Beverages to amend Section 4-56 (A) that alcoholic beverage appeals shall be heard by a hearing board instead of hearing officer

AN ONE READ ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 4 - ALCOHOLIC BEVERAGES TO AMEND SECTION 4-56 (A) ALCOHOLIC BEVERAGE APPEALS HEARING OFFICER AMENDING THAT ALCOHOLIC BEVERAGE APPEALS SHALL BE HEARD BY A HEARING BOARD INSTEAD OF HEARING OFFICER AND THE DEFINITION OF HEARING BOARD BE ADDED TO SECTION 4-1 DEFINITIONS

7. Consideration and Approval of an Ordinance 02013-02 –06 amending Chapter 4 – Alcoholic Beverages to amend Section 4-56 (A) that alcoholic beverage appeals shall be heard by a hearing board instead of hearing officer

AN ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 4 - ALCOHOLIC BEVERAGES TO AMEND SECTION 4-56 (A) ALCOHOLIC BEVERAGE APPEALS HEARING OFFICER AMENDING THAT ALCOHOLIC BEVERAGE APPEALS SHALL BE HEARD BY A HEARING BOARD INSTEAD OF HEARING OFFICER AND THE DEFINITION OF HEARING BOARD BE ADDED TO SECTION 4-1 DEFINITIONS (First Read)

8. Consideration and Approval of One Read Ordinance 02013-02-07 to Amend Chapter 2 Administration by adding Section 2-66 Budgetary Policies

AN ONE READ ORDINANCE TO AMEND CHAPTER 2 ADMINISTRATION BY ADDING SECTION 2-66 BUDGETERY POLICIES, ADOPTING THE POLICY RELATING TO THE BUDGETARY PROCESS, AS A COMPONENT OF THE FINANCIAL MANAGEMENT PROGRAM FOR THE CITY OF BROOKHAVEN, GA AND TO PROVIDE FOR GUIDANCE IN ADMINISTERING THE POLICY

9. Consideration and Approval of First Read Ordinance 02013-02-08 to Amend Chapter 2 Administration by adding Section 2-66 Budgetary Policies

AN ORDINANCE TO AMEND CHAPTER 2 ADMINISTRATION BY ADDING SECTION 2-66 BUDGETERY POLICIES, ADOPTING THE POLICY RELATING TO THE BUDGETARY PROCESS, AS A COMPONENT OF THE FINANCIAL MANAGEMENT PROGRAM FOR THE CITY OF BROOKHAVEN, GA; AND TO PROVIDE FOR GUIDANCE IN ADMINISTERING THE POLICY (First Read)

10. Consideration and Approval of One Read Ordinance 02013-01-xx to readopt original intent for SOB due to scrivener's error

11. Consideration and Approval of First Read Ordinance 02013-01-xx to readopt original intent for SOB due to scrivener's error

- 12. **ACTION ITEM: Consideration and approval of franchise agreement for payment of franchise fees to the City for use of the City Right of Way for electrical lines and mayor to sign and execute agreement**
- 13. **ACTION ITEM: Consideration and approval of R2013-02-01 a resolution requesting amendment to the Charter to set term limits**
- 14. **ACTION ITEM: Schedule of Planning Commission and Zoning Board of Appeals Meetings**
- 15. **ACTION ITEM: Approval of estimated budget for court build out**
- 16. **ACTION ITEM: Consideration and approval of appointments of commissions, boards and authorities**
- 17. **ACTION ITEM: Mayor’s Nomination of Court Judges with Motion for Ratification by Council (Oaths to follow)**
- 18. **ACTION ITEM: Order establishing offenses payable through the City of Brookhaven Traffic Violations Bureau**
- 19. **ACTION ITEM: Consideration and approval of Resolution R2013-02-02 adopting the Municipal Court Fee Schedule to offset expenses and defray the cost of operation of the Brookhaven Municipal Court and for other purposes**

M) OTHER BUSINESS

N) PUBLIC COMMENTS

O) MAYOR’S COMMENTS

P) EXECUTIVE SESSION

Q) ADJOURNMENT

K₁

MEMORANDUM

AGENDA # ID _____

MEETING OF February 12, 2013

DISTRICT/COMMITTEE: City Council

ISSUE/AGENDA ITEM TITLE: Acceptance of the CBeyond Communications Contract for Internet and Phone service at City Hall.

BACKGROUND/SUMMARY:

To provide internet and phone service on day one for the City, InterDev established a month to month contract with One Ring Networks to provide wireless internet service at City Hall. Using this internet service, inbound phone calls are being routed from InterDev's corporate office over the internet to City Hall. This was meant to be a temporary solution until the City could establish its own permanent service. The Information Technology Department received three quotations for service from AT&T, CBeyond and Windstream to provide 50 Mbps for internet access, allotment for up to 32 simultaneous phone calls, 300 direct inward dial (DID) numbers, and 13 public IP addresses. After reviewing the quotes, CBeyond had the low bid and the Information Technology department is recommending CBeyond because of the lower cost and the high level of customer support that they offer. This will provide a higher quality of service by eliminating the need to route phone calls over the internet as well as reduce the probability for a phone outage by not having to rely on multiple internet connections. It will also establish the permanent internet and phone solution for the City.

FISCAL IMPACT: (Budgeted – over or under)

The cost for this service would be \$1079.00 / month plus the associated line fees that we estimate to be around \$245/month.

STAFF RECOMMENDATION: Accept the contract for phone and internet service with CBeyond Communications

ATTACHMENTS:

ATT – InternetPhone.pdf

CBeyond – InternetPhone.pdf

Windstream – InternetPhone.pdf



K1

CBeyond™
City of Brookhaven Service Proposal
BeyondVoice Ultimate Edition

Package

BeyondVoice Ultimate Edition

- o 50 Mbps
- o Up to 32 simultaneous calls
- o 2,000 Long Distance, Mobile, or Toll-free Minutes
- o Extended Local Calling (Metro)
- o 300 DID's
- o 3 Standard Toll-Free Number's
- o 1 Directory Listing
- o Caller ID w/ Name
- o Basic line features include: *Call forwarding, Call blocking, Three-way calling, Call Transfer Disconnect, Call Waiting*
- o 5 GB Web Hosting
- o Up to 10 HME 2010 Email Accounts (basic)
- o Up to 5 Landline voicemail boxes (Unified Messaging Included)
- o 5 Secure Desktop Subscriptions
- o 13 Public IP Address
- o 5 GB Secure Backup
- o 1 Fax to E-mail number
- o Anytime access to on-line account management tools
- o Cbeyond will act as your Internet Service Provider

Service Period

1 year service **\$1079.00**** (per month)

Install Fee

waived

*Includes Cisco 2430 IAD which is a router designed to manage communications between your network and Cbeyond's while ensuring dial tone and bandwidth redundancy.

**Price quoted is good for 30 days and subject to change thereafter.

Contact:
Brian Bitler
Cbeyond
Phone: 678-570-4264
E-mail: Brian.Bitler@cbeyond.net
www.cbeyond.net

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K

Part of Multiple Account
 Part of Multiple Location
 New
 Move
 Change
 Current Cbeyond Customer?
 Tax-Exempt?

LEGAL COMPANY NAME / D.B.A. City of Brookhaven	CONTACT NAME Chris Pike	CONTACT PHONE NUMBER 404-637-0470
SERVICE ADDRESS 200 Ashford Center North	SUITE, FLOOR, ROOM Suite 150	CITY Dunwoody
	COUNTY	STATE GA
		ZIP 30338

Is this the name and address you want listed for directory listing services? Yes No

Online Bill Payment ** Cbeyond does NOT mail paper bills. 100% of Cbeyond Customers are billed electronically through Cbeyond Online ******

NAME OF CONTACT TO RECEIVE BILLS Chris Pike	E-MAIL ADDRESS OF CONTACT RECEIVING BILLS (ALL BILLS ARE SENT ELECTRONICALLY) chris.pike@brookhaven-ga.us
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Owner Contact	CONTACT NAME: Chris Pike	ALT BILLING? <input type="checkbox"/>	INSTALL SCHED? <input type="checkbox"/>	AFTER HOURS? <input type="checkbox"/>	PHONE # 404-637-0470	MOBILE #	EMAIL ADDRESS: chris.pike@brookhaven-ga.us
Primary Administrative Contact	CONTACT NAME: Gary Nichols	ALT BILLING? <input type="checkbox"/>	INSTALL SCHED? <input type="checkbox"/>	AFTER HOURS? <input type="checkbox"/>	PHONE # 770-643-4400	MOBILE #	EMAIL ADDRESS: GNichols@Interdev.com
Other Administrative Contacts (optional)	CONTACT NAME:	ALT BILLING?	INSTALL SCHED?	AFTER HOURS?	PHONE #	MOBILE #	EMAIL ADDRESS:

STEP 1: SELECT A BEYONDVOICE PACKAGE

BeyondVoice Package - up to 32 landlines, 2,000 Toll Free, PPU Mobile Minutes, Outbound Long Distance Minutes, and 60 Minutes of Audio Conference Calling	Service Period ¹ and Monthly Fee			Smart Start Setup Fee ³
	3 Year ²	2 Year ²	1 Year ²	
Office Edition (Ultimate)	10 Mbps	<input type="checkbox"/> \$999 /mo	N/A	N/A
	25 Mbps	<input type="checkbox"/> \$1199 /mo	N/A	N/A
	50 Mbps	<input checked="" type="checkbox"/> \$1374 /mo	N/A	N/A
	100 Mbps	<input type="checkbox"/> \$1534 /mo	N/A	N/A

- Service Period begins with Service Activation.
- Applicable taxes and fees are not included in the listed charges.
- The Smart Start Setup Fee does not include phone and LAN vendors fees.
- The Smart Start Total Service includes installation and up to 3 hours setup training, prior to activation.

STEP 2: SETUP BEYONDVOICE STANDARD SERVICES

Service Name	QTY	Standard with Package	Upgrade Options	QTY	Fee	Total
BROADBAND			Additional 5 Mbps broadband (max = 5 additional)		\$75.00/mo	\$ -
SECURE DESKTOP		Subscriptions Security software subscriptions for up to 5 computers included.	Additional subscriptions (Per PC)		\$5.00/mo	\$ -
DOMAIN NAME	<input type="checkbox"/>	Domain Name Hosting	Additional domain names		\$10.00/yr	\$ -
WEB HOSTING	<input type="checkbox"/>	Web Hosting 30 GB storage and 3000 GB data transfer included.	Unix Windows <input type="checkbox"/> <input type="checkbox"/> Additional Web Hosting <input type="checkbox"/> <input type="checkbox"/> Web Marketing <input type="checkbox"/> <input type="checkbox"/> Web Ecommerce <input type="checkbox"/> <input type="checkbox"/> Web Local Listings		\$15.00/mo, \$20.00/mo, \$60.00/mo, \$119.95/yr	\$ -
WEB DESIGN - PROFESSIONAL SERVICES		N/A Web Design Professional Services are a one time charge. 50% will be billed on your first invoice with the remainder being billed on the invoice after job completion.	Do-It-For-Me 15 page website 10 page website 5 page website DIY Plus 5 page website 3 page website Update/Migration 3 hrs web design		\$1,925 one time, \$1,375 one time, \$800 one time, \$575 one time, \$375 one time, \$360 one time	\$ -
HOSTED MICROSOFT EXCHANGE		Outlook Basic (POP) Email Boxes Up to 10 mailboxes included.	Additional Outlook Basic (POP) Email Boxes (500 MB) Outlook Complete mailboxes These mailboxes include Unified Messaging with Cbeyond voicemail. Outlook Complete Mailbox Unlimited Storage (requires Outlook Complete) Email Archiving <input type="checkbox"/> Indicates interest only. Email Archiving is provided and billed by a 3rd party. Mobile Sync <input type="checkbox"/> Mobile Sync for Non - Cbeyond mobile devices (requires Outlook Complete)		\$0.50/mo, \$10.00/mo, \$3.00/mo (per box), \$5.00/mo	\$ -
FAX TO EMAIL	<input type="checkbox"/>	One inbound Fax to Email number	Additional Fax to Email number		\$5.00/mo	\$ -
TOLL FREE NUMBER	3	Toll free numbers Up to 3 toll free numbers included.	Additional Toll Free number		\$2.00/mo	\$ -
LOCAL or TRUNK LANDLINES (Bx)	32	Landlines Up to 32 landlines included.	Additional Local or Trunk Landline		\$10.00/mo (per line)	\$ -
Maximum of 48 local or trunk lines available						
VIRTUAL RECEPTIONIST		N/A		<input type="checkbox"/>	\$35.00/mo	\$ -
SECURE BACKUP	<input type="checkbox"/>	5 GB storage	Additional Storage 1 - 5 GB Add'l GB 6+ GB Add'l GB		\$1.50/mo, \$1.00/mo	\$ -

Customer Initials

INITIAL HERE

SERVICE ORDER CONTRACT

COMPANY NAME City of Brookhaven	CONTACT NAME Chris Pike	CONTACT PHONE NUMBER 404-637-0470
SERVICE ADDRESS 200 Ashford Center North	SUITE, FLOOR, ROOM Suite 150	CITY Dunwoody
	COUNTY	STATE GA
		ZIP 30338

SELECT YOUR PHONE SYSTEM INTERFACE

<input type="checkbox"/> Analog	<input type="checkbox"/> SIPconnect • Applies to certified Interoperable phone system only.	<input checked="" type="checkbox"/> Digital - PRI • At least 1 trunk line is required. • Local features are available in specific markets.	<input type="checkbox"/> Digital - CAS • At least 1 trunk line is required. • Inbound Caller ID, local features not available.
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IMPORTANT INFORMATION ABOUT 911 SERVICES

Cbeyond gives 911 providers only one set of location information (address) for each account. Cbeyond does not provide different 911 location information for individual extension numbers. Cbeyond does not currently support customers who maintain their own 911 location information with Emergency Service Providers.

DIRECT INWARD DIAL (DIDs) <u>200</u> DIDs Up to 200 DIDs included. Digital and SIPconnect customers only.		Additional blocks of 10 DIDs	<u>10</u> x	\$5.00/mo	\$ 50.00
VOICEMAIL _____ Voicemail Up to 5 voice mailboxes included (Limit 1 per hunt group). Analog & SIPconnect customers only.		Additional Voicemail Basic	_____ x	\$5.00/mo	\$ -

STEP 3: SELECT ADDITIONAL BEYONDVOICE SERVICES

Choose the additional tools for your business.

	Quantity	Fee	Total
Public IP Addresses (with Multinet Configuration)			
<input type="checkbox"/> 1 IP Address	<input type="checkbox"/>	Included	_____
<input type="checkbox"/> 5 IP Addresses	<input type="checkbox"/>	\$10.00/mo	\$ -
<input checked="" type="checkbox"/> 13 IP Addresses	<input checked="" type="checkbox"/>	\$30.00/mo	\$ 30.00
<input type="checkbox"/> 29 IP Addresses	<input type="checkbox"/>	\$115.00/mo	\$ -
<input type="checkbox"/> 61 IP Addresses	<input type="checkbox"/>	\$300.00/mo	\$ -
<input type="checkbox"/> VPN On-Net (\$50 per site) <small>Includes VPN Remote User Unlimited. If SecureVPN On-net is connecting only to a BeyondOffice account, the VPN charge is waived.</small>	_____ x	\$50.00/mo	\$ -
		Connect To: _____	
<input type="checkbox"/> VPN Off-Net (\$50 per site)	_____ x	\$50.00/mo	\$ -
<input type="checkbox"/> VPN Remote User Unlimited <small>To activate this service, create your first remote user on Cbeyond Online (www.cbeyondonline.net).</small>		\$25.00/mo	\$ -
<input type="checkbox"/> Cbeyond International VoIP <small>Includes 500 minutes per month of international long distance to select countries. All minutes over 500 to these countries are rated at \$0.06. For all other countries, standard rates apply at all times. A list of countries can be found at www.cbeyondonline.net.</small>	<input type="checkbox"/>	\$30.00/mo	\$ -
Cbeyond Conferencing (60 Minutes of Audio Conference Calling (\$0.22 / minute / user overage) included)			
<input type="checkbox"/> Cbeyond Audio Conferencing Advantage <small>Includes 500 minutes per month of Audio Conferencing minutes. All minutes over 500 are rated at \$0.06. Conferencing minutes are billed per minute per user</small>		\$30.00/mo	\$ -
<input type="checkbox"/> Cbeyond Audio Plus Web Conferencing Advantage <small>Includes 500 minutes per month of Audio and Web Conferencing minutes and a Web User Limit of 50 participants. All minutes over 500 are rated at \$0.06. Conferencing minutes are billed per minute per user</small>		\$50.00/mo	\$ -
<input type="checkbox"/> Toll Free Services			
<input type="checkbox"/> Enhanced Toll Free #	_____ x	\$7.00/mo	\$ -
<input type="checkbox"/> Toll Free Directory Listing (\$15 setup fee per listing)	_____ x	\$15.00/mo	\$ -
<input type="checkbox"/> Calling Card Number(s) http://www.cbeyond.net/fcc.pdf for international rates. <small>All calling card minutes are rated at \$0.22/minute per domestic minute. Review international rates at http://www.cbeyond.net/fcc.pdf</small>		Pay Per Use	N/A
<input type="checkbox"/> NAT/Port Forwarding Data Connectivity - Standard Configuration	<input type="checkbox"/>	Included	N/A
<input type="checkbox"/> Additional Directory Listing	_____ x	\$5.00/mo	\$ -
<input type="checkbox"/> Additional Directory Listing Services			
<input type="checkbox"/> Private, DA Only, Suite/Floor/Room Listings	_____ x	\$5.00/mo	\$ -
<input type="checkbox"/> Foreign Exchange Listings	_____ x	\$5.00/mo	\$ -
<input type="checkbox"/> Alternate Call / Cross Reference Listings	_____ x	\$6.00/mo	\$ -
<input type="checkbox"/> Alternate User Listings	_____ x	\$2.49/mo	\$ -

SIPCONNECT CUSTOMERS ONLY

<input type="checkbox"/> Analog Ports Up to 2 Analog ports are INCLUDED.			
<input type="checkbox"/> First two analog ports		Included	N/A
<input type="checkbox"/> Additional analog ports	_____ x	\$10.00/mo	\$ -
<input type="checkbox"/> Personal Call Assistant Local Feature Set The 1st account subscription is INCLUDED.			
<input type="checkbox"/> Additional subscriptions (2 nd through 10 th)	_____ x	\$5.00/mo	\$ -
<input type="checkbox"/> Additional subscriptions (11 th and more)	_____ x	\$2.50/mo	\$ -

Customer Initials

INITIAL HERE

SERVICE ORDER CONTRACT

COMPANY NAME City of Brookhaven	CONTACT NAME Chris Pike	CONTACT PHONE NUMBER 404-637-0470
SERVICE ADDRESS 200 Ashford Center North	SUITE, FLOOR, ROOM Suite 150	CITY Dunwoody
	COUNTY	STATE GA
		ZIP 30338

ADDITIONAL LONG DISTANCE MINUTE BLOCKS

Long Distance Outbound Minute Blocks (Cannot be combined with Unlimited Long Distance)

<input type="checkbox"/> 1,000 Minute - Long Distance Outbound Block (overage \$.045)	\$30.00/mo	\$ -
<input type="checkbox"/> 2,500 Minute - Long Distance Outbound Block (overage \$.04)	\$70.00/mo	\$ -
<input type="checkbox"/> 5,000 Minute - Long Distance Outbound Block (overage \$.04)	\$130.00/mo	\$ -
<input type="checkbox"/> 10,000 Minute - Long Distance Outbound Block (overage \$.04)	\$270.00/mo	\$ -
<input type="checkbox"/> 15,000 Minute - Long Distance Outbound Block (overage \$.04)	\$400.00/mo	\$ -
<input type="checkbox"/> 20,000 Minute - Long Distance Outbound Block (overage \$.04)	\$500.00/mo	\$ -
<input type="checkbox"/> 25,000 Minute - Long Distance Outbound Block (overage \$.04)	\$600.00/mo	\$ -
<input type="checkbox"/> 50,000 Minute - Long Distance Outbound Block (overage \$.035)	\$1050.00/mo	\$ -
<input type="checkbox"/> 100,000 Minute - Long Distance Outbound Block (overage \$.03)	\$1700.00/mo	\$ -
<input type="checkbox"/> 150,000 Minute - Long Distance Outbound Block (overage \$.02)	\$2250.00/mo	\$ -

ADDITIONAL TOLL FREE MINUTE BLOCKS

Toll Free Inbound Minute Blocks

	Fee	
<input type="checkbox"/> 1,000 Minute - Toll Free Inbound Block (overage \$.045)	\$40.00/mo	\$ -
<input type="checkbox"/> 2,500 Minute - Toll Free Inbound Block (overage \$.04)	\$95.00/mo	\$ -
<input type="checkbox"/> 5,000 Minute - Toll Free Inbound Block (overage \$.04)	\$175.00/mo	\$ -
<input type="checkbox"/> 10,000 Minute - Toll Free Inbound Block (overage \$.04)	\$320.00/mo	\$ -
<input type="checkbox"/> 15,000 Minute - Toll Free Inbound Block (overage \$.04)	\$430.00/mo	\$ -
<input type="checkbox"/> 20,000 Minute - Toll Free Inbound Block (overage \$.04)	\$600.00/mo	\$ -
<input type="checkbox"/> 25,000 Minute - Toll Free Inbound Block (overage \$.04)	\$725.00/mo	\$ -
<input type="checkbox"/> 50,000 Minute - Toll Free Inbound Block (overage \$.035)	\$1300.00/mo	\$ -
<input type="checkbox"/> 100,000 Minute - Toll Free Inbound Block (overage \$.03)	\$2200.00/mo	\$ -

IMPORTANT DETAILS: BEYONDVOICE SERVICES

• BeyondMobile Service -

- **Activation Fee:** One-time \$25 activation fee is charged per line. The activation fee may be waived for orders with any combination of 4 or more mobile handsets and/or laptop cards.
- **Early Termination Fee:** An early termination fee of up to \$175 (per mobile line) will apply if service is cancelled before the 2 year mobile line contract end date.
- **Text Messaging/SMS Usage:** All Cbeyond phones can send and receive text messages. Phones that have the Unlimited SMS/Text Messaging feature do not incur additional charges for any text message that is sent or received. Phones without an Unlimited SMS plan incur a charge of 10¢/text for all text messages that are sent or received. Text messaging sent via mass distribution not permitted.
- **Mobile Workforce Manager:** \$25 setup fee per MWM subscription. (NOTE: Cbeyond's Acceptable use Policy requires that all persons provided a MWM phone will be informed that their movements may be monitored by their account administrator.) Cbeyond does not record or track MWM monitoring or usage.
- **International Voice & Data Usage:** International GSM Voice and Data require the International Roaming plan. Voice calls are billed at per minute rates that vary by country. Availability of coverage for both voice and data vary by country.
- **Unlimited Voice Plan:** Domestic calling only. International calling charges apply. Unlimited minutes cannot be shared with other mobile or landline minutes and do not count against BeyondVoice package minutes nor toward the volume discount tier for pooled minutes.
- **Feature Phone Unlimited Data Plan:** Tethering not permitted. Refer to Acceptable Use Policy for additional details.
- **Smartphone Unlimited Data Plan:** Tethering not permitted with unlimited data plan. Refer to Acceptable Use Policy for additional details.
- **4G Unlimited Laptop Card Data Plan:** Data Use must comply with Cbeyond's Acceptable Use Policy.

- **Caller ID with Name** - Customer provides display unit. Not available for CAS. Not all PRI phone systems can be configured with Caller ID w/ Name.
- **Contract Renewals** - If you are renewing your Cbeyond services, all attachment terms and pricing from your prior Cbeyond contract will remain in legal force and unchanged unless a new attachment addressing those rates, terms or conditions is executed.
- **Directory Assistance** - Directory Assistance - Directory assistance is rated per call. Rates for Directory Assistance are posted at http://cbeyond.custhelp.com/cgi-bin/cbeyond.cfg/php/enduser/std_adp.php?p_faaid=3174.
- **Extended Local Calling** - Please go to <http://www.cbeyond.net/services/voice-local.htm> for Extended Local Calling Maps.
- **Managed Firewall** - Your LAN Vendor will need to make configuration changes on Cbeyond Online to set up Cbeyond's Managed Firewall features
- **Pooled Minutes** - Includes Mobile pay-per-use, Toll Free and Domestic Long Distance minutes. Please go to www.cbeyond.net/pdf/fcc.pdf for international long distance rates.
- **Overage Charges** - Overage charges for Outbound Long Distance, Toll Free and PPU Mobile Usage will be billed at a rate of \$0.05/minute unless a Outbound Long Distance or Toll Free Inbound Minute Block has been purchased
- **Unlimited Long Distance** - *Cannot be used by call centers, autodialers, and customers who aggregate traffic. Does not apply to mobile usage. The complete Acceptable Use Policy is accessible at the Legal link on www.cbeyond.net. Plan not available on all BeyondVoice offers.
- **Secure Backup** - Secure Backup software requires Windows (2000, XP, 2003, and Vista, 32 and 64 bit), and Windows 7 (32 and 64 bit) Windows Server 2000, 2003, 2008, or Windows Home Server).
- **Secure Desktop** - Secure Desktop requires Windows Vista (64-bit, 32-bit), Windows XP Home, Windows XP Pro, Windows XP Media Center, 1GB of RAM, and 600MB of free hard drive space.
- **VPN** - A signed "Things You Need To Know" form is required for each VPN product ordered - On-net, Off-net, and Remote User Unlimited.
- **Web Hosting Marketing Tools** - Includes search engine registration, search engine optimization, and Emarketing guides.
- **Web Hosting Overage Pricing and Miscellaneous Plans** - Web Hosting data transfer beyond 3,000 GB is billed at \$0.10 / MB
- **Directory Listings**

Each customer receives 1 complimentary single straight line listing in the white pages for the main listing. There is a charge for each additional listing. All customers receive 1 complimentary yellow page listing on the main listing ONLY.

Any primary and/or additional listings will only be listed in the Local Telephone Company directories. Cbeyond provides only basic straight line listings in the white and yellow pages. Cbeyond does not provide any graphical advertising listings in either the white or yellow pages.

The deadline for phone book updates varies by area according to the publishing schedule. If your order is placed after the deadline, your directory listing request may not appear in the next printed version. Directory assistance (411) is updated when your order is completed.

Please note: Qwest market customers will need to contact Dex publishing to add an YPH (Yellow Page Heading) to their yellow page listing and to add any additional listings they would like to have in the yellow pages.

**Customer
Initials**

INITIAL HERE

Service Order Contract Terms and Conditions

1. Introduction. Cbeyond Communications LLC ("Cbeyond") is delighted to provide you the BeyondVoice® and other Cbeyond® services and enhancements ordered on the first several pages of this Service Order Contract (the "Order Terms"). The word "Contract" includes and incorporates the Order Terms, all of these Terms and Conditions and any Cbeyond Service Addendums that you may sign at any time. As used in this Contract, the words "we," "our" and "us" refer to Cbeyond and the words "you," and "your" refer to the entity that has signed this Contract with us. The word "Services" includes and incorporates the BeyondVoice, BeyondOffice® and BeyondMobile® communications packages, enhancements and other business services ordered on the Order Terms and any additional services you may order or obtain from Cbeyond at any time that are not expressly governed by another agreement you sign with us. The following Terms and Conditions govern all aspects of your purchase, use and termination of all Cbeyond Services.

2. Services and Installation; Installation Commitment for BeyondVoice Services. We will provide you with the Services identified on the Service Order Contract for the "Service Period," "Monthly Fee" and "Service Address" described in the Order Terms. For BeyondMobile Service, the Service Address will be recorded as your Primary Place of Use. You are responsible for the Smart Start Installation Fee ("Install Fee") and, if you do not opt-out of it, the Smart Start Application Set Up Tutorial Fee ("Tutorial Fee") described in the Order Terms.

3. Equipment.

3.1 To provide our BeyondVoice or BeyondOffice Services, we must install equipment at your Service Address; this equipment remains our sole property at all times and shall not be considered customer-premises equipment. You agree to comply with all instructions and requirements regarding the use and/or care of our equipment and to take reasonable measures to protect our equipment at all times. You will provide a secure, air-conditioned space to house the equipment and sufficient electricity (with certified earth ground) to operate the equipment. You agree to pay us the replacement value of any lost, stolen, damaged or unreturned equipment. We will replace any of our equipment that does not perform as specified, at no charge to you, unless we determine, in our sole discretion, that you are directly or indirectly responsible for the equipment failure. Our services do not include the installation or maintenance of any inside wiring at your Service Address aside from that which is necessary to power and serve our equipment; the installation and maintenance of inside wiring for your telecommunications and computer network is your sole responsibility.

3.2 If you subscribe to our BeyondMobile Service, you must purchase mobile phones and/or laptop cards ("Mobile Devices") from us. Your purchase also may include related software and other products ("Mobile Related Products") that work in conjunction with your Mobile Devices. Mobile Devices and Mobile Related Products may be covered under a limited warranty of their manufacturer that Cbeyond will extend to you without charge to the extent we can do so under our agreements with those manufacturers. If and when available, you may also elect to purchase an extended warranty for the Mobile Devices and Mobile Related Products at the then current cost for the selected warranty. In our sole discretion, we may change or modify your Mobile Devices and Mobile Related Products remotely and without notice to you, including changes or modifications to any software or programming. Among other things, this may affect or delete any data or information stored on your Mobile Devices or Mobile Related Products, including the configuration of your Mobile Devices or Mobile Related Products. Cbeyond is not responsible for any monetary loss, or adverse effects of such changes or modifications. Under certain, limited circumstances, you may choose to use Cbeyond's Hosted Microsoft® Exchange ("HME") service with mobile phone(s) you do not purchase from Cbeyond. In such an event, provided that you notify Cbeyond in advance of your desire to use a non-Cbeyond phone with your HME service, Cbeyond will provide you with commercially reasonable assistance in configuring your HME service to work with your non-Cbeyond mobile phone, but Cbeyond will not be responsible in any way for any warranties associated with your non-Cbeyond mobile phone, any problems or issues you have with your mobile phone service or mobile phone service provider, or any data loss, email loss or other damage you may sustain which results from your use of HME with a non-Cbeyond mobile phone.

3.3 The installation, operation, maintenance, repair or removal of any software, program, or other hardware related to the Cbeyond Services, including the Mobile Related Products (together with the Mobile Related Products, the "Services Related Products") on your computer(s), network(s) or other hardware may result in service outage, loss or damage to that equipment or any data, information or files on your equipment. You agree to be solely responsible for all data and software back-up and to otherwise protect your computer and network data, information and files. You assume all responsibility for impacts, loss or damage to your computer or network hardware, data, information, files, peripherals, Mobile Devices or Services Related Products associated with installing, operating or removing any Services Related Products. Any warranty covering your computer, network or other equipment may become void when you open that computer or equipment to install any Services Related Products, whether or not you elect to install and run any of those Services Related Products. We do not commit or warrant that your installation or use of any Services Related Products will permit you to access, operate, or use any Service (including any BeyondMobile Service).

3.4 If any Mobile Device is stolen or misplaced, you must report the incident to us immediately. Failure to report the theft of your Mobile Device may result in your being liable for all charges and calls placed using your Mobile Device from the time the Mobile Device was stolen or misplaced until we are able to suspend your BeyondMobile Service. Upon proper notice, we will suspend your BeyondMobile Service (up to maximum of 30 days) to permit you to replace the

stolen or misplaced Mobile Device. During any such suspension, you remain liable for any recurring costs associated with your BeyondMobile Service.

3.5 Promptly upon receipt of notice, you must either (a) immediately make all Cbeyond equipment and property available to us or (b) pay us the replacement value of all equipment and other property that you do not make immediately available to us. You agree that you shall be responsible for all costs that we incur in retrieving or attempting to retrieve our equipment and property should you not make it immediately available. Upon our termination of this Contract for any reason, you will forfeit any right to obtain a refund or credit of any amount paid previously or owing to us under this Contract, except for any credit owing to you under the Network Availability Commitment. Sections 1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 19 and 20 will survive the termination of this Contract.

4. Network Availability Commitment for BeyondVoice and BeyondOffice Services.

4.1 We will use commercially reasonable efforts to make our Cbeyond IP "Network" (defined below) available to you at all times, subject to certain limitations described in this Contract (the "Network Availability Commitment"). For purposes of this Network Availability Commitment, the Cbeyond IP Network ("Network") means the integrated access device, local access loop, aggregation router, connectivity to the core network, and core network components up to the handoff to either the Internet peering point (for Internet packets) or the handoff to local, long distance or other voice Services provider (for phone service traffic).

4.2 A Network outage occurs when there is total "Loss of Service" (defined below) for more than 60 consecutive minutes per occurrence. "Loss of Service" means that Cbeyond is unable to transmit IP packets on your behalf, such that you are unable to communicate with or access any other Internet Service Providers via the IP transmission protocol or unable to communicate with or access any other telecommunications providers via the Public Switched Telephone Network, as a result of the failure of Cbeyond facilities or equipment used to provide the BeyondVoice or BeyondOffice Services. A Loss of Service does not include any loss of or inability to use your BeyondMobile Services.

4.3 The Network Availability Commitment in this Section 4 does not cover or apply to any of the following: (a) BeyondMobile voice or data Services or equipment; (b) Services activation or any Loss of Service caused by our maintenance of the system or Network; or (c) problems or issues relating to your equipment at the Service Address, including, but not limited to your Local Area Network, your phone equipment (including cables, PBX and associated cards), routine maintenance events, outages or disruptions caused by you either directly or indirectly, interconnections to or from and connectivity within other Local Exchange Carriers' networks (for example, calls to certain numbers or area codes), subsequent voice carriers' networks, interconnections to or from and connectivity within other Internet Service Provider networks, degraded or slow Services, and Force Majeure events.

4.4 You are eligible for a full day's credit equal to 1/30th of the BeyondVoice or BeyondOffice recurring Monthly Fees (excluding any fees for additional Services) (the "Daily Credit") for each full 60 minutes that you experience a covered Network outage for that Service after you have reported it to Technical Support (tech.support@cbeyond.net or 1-866-424-5100) as further described in Section 5; however, you may receive: (a) a maximum of 5 Daily Credits for covered Network outages in any 24-hour period starting from when you reported it to us; and (b) no more than 30 Daily Credits for covered Network outages in any calendar month. You are eligible to receive daily credit only as to the BeyondVoice or BeyondOffice Service for which you experienced a covered Network outage.

5. Credit Limits and Reporting Procedures.

5.1 To be eligible for the Network Availability Commitment, you must notify Technical Support (tech.support@cbeyond.net or 1-866-424-5100) immediately when you experience a Network outage or Loss of Service.

5.2 A Network outage begins when you notify Technical Support and ends when Cbeyond's Technical Support confirms that Services have been re-established. To receive your credit, you must request it at Cbeyond Online (www.cbeyondonline.net) or via email to customer@cbeyond.net within 7 days of the end of the calendar month in which the Network outage occurred. Credits do not include any applicable taxes or other governmental charges described in Section 6.

5.3 Your exclusive remedy or recovery for any Loss of Service or covered Network outages under the Network Availability Commitment or this Contract, or other damages arising out of or related to the unavailability of the Services, shall not exceed the amount of the credit described in Sections 4.4 and this Section 5, or, if applicable, your right to terminate the BeyondVoice or BeyondOffice Service for which you experienced a covered Network outage as described in Section 8.3 below. All Network Availability Commitment credit requests are subject to Cbeyond's review and verification. You must be current on all payments (i.e. no balance older than 30 days) in order to receive credit under the Network Availability Commitment. Credits will appear within two (2) billing cycles after credit approval. No credits under the Network Availability Commitment are available for your BeyondMobile Services.

6. Charges; Payments and Late Payment Fees and Costs.

6.1 Your Monthly Fee and other charges begin on the earlier of: (a) when the Services are available to you; or (b) 30 days after our circuit has been delivered to your Service Address (whether or not your Services have been activated). Monthly Fees and activation fees for BeyondMobile Services are due for each Mobile Device on the earlier of (x) when that Mobile

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Device has been programmed to send or receive mobile calls or data under your account or (y) 7 calendar days after we ship you that Mobile Device. Each Install Fee and Tutorial Fee for BeyondVoice® or BeyondOffice® Services is due upon completion of your installation or, as the case may be, your tutorial. Cbeyond® is not obligated to invoice or provide Services to anyone other than you, and you agree to reimburse, compensate and pay Cbeyond for any losses, claims, damages, liabilities, or penalties that Cbeyond or any of our officers, directors, agents, successors or assigns may incur from anyone other than you that uses or shares your Service Address or the Cbeyond Services and our equipment, notwithstanding anything to the contrary in these Terms and Conditions.

6.2 Cbeyond does not and will not provide paper invoices; each month we will send you an electronic invoice that will include all recurring, fixed Monthly Fees and charges billed one month in advance. YOU AGREE TO PAY THE TOTAL AMOUNT OF EACH INVOICE BY THE INVOICE DUE DATE SHOWN ON THAT INVOICE. To dispute the amount or accuracy of any invoice and be eligible for credits based on that dispute, you must provide Cbeyond with detailed, written notice of the dispute by the due date of that invoice. You must pay any charge or amount that you do not properly dispute by the due date of the first invoice for those charges, without exception. If, after investigation, Cbeyond determines that a refund is due, we will credit the amount of the incorrect items on a subsequent invoice. Upon receipt of notice from Cbeyond that the disputed charges are correct, all past due amounts must be paid, in addition to any late payment charges described in Section 6.4.

6.3 For any BeyondMobile® Service, your connectivity charges may vary depending on the calling plan selected, time, location, network area, number dialed and services used. Most mobile calls and text messages will result in airtime or usage charges. Additional charges will also apply upon your use or activation of additional features, multiple simultaneous calls for certain services (including call-waiting, call-forwarding, or 3-way calling) and for excessive, illegal or improper mobile data usage (as more fully described in our Acceptable Use Policy identified in Section 18 below). Any mobile calling plans that you select are part of this Contract. If you use your Mobile Device outside the rate area as set forth in your calling plan or use another company's mobile network for any reason, you will be responsible for any extra charges, including long distance, toll, and roaming charges caused by such use. Airtime and other measured usage charges are billed in full-minute or such other increments as we determine to use from time to time, and we may round up any such usage charges to the next minute in billing those increments.

6.4 All payments must be in U.S. dollars. If you do not pay all charges when due under this Contract, a late payment fee will be assessed on the unpaid amounts at the lower of 1.5% (one and one half percent) per month on the unpaid amounts or the maximum rate allowed by law. You are also responsible for all other costs and legal fees incurred in collecting all unpaid amounts, unless otherwise ordered by an arbitrator or court in any action to collect those unpaid amounts. Cbeyond reserves the right to assess a \$25 fee for any check returned for insufficient funds or not paid when presented for payment.

6.5 You agree that we may obtain credit reports and other information about you from credit reporting agencies and other sources at any time during this Contract. If requested, you agree to provide a deposit as a guarantee of payments under this Contract or to increase the amount of any prior deposit should we find your credit standing, financial circumstances or payment history unsatisfactory at any time or if your account incurs excessive usage charges. The amount of the deposit will be in our sole discretion but in no instance will exceed an amount that is twice your average monthly bill or projected average monthly bill. Cbeyond reserves the right to apply any deposited amount to past due charges or Early Termination Fees under this Contract, with or without notice to you. You also agree to promptly redeposit any amount so applied at our request. We may terminate your Services as described in Section 8.5 below if you fail to adhere to the deposit policies described in this paragraph.

6.6 In addition to the charges for your Cbeyond Services, you are responsible for all federal, state and local sales, use and excise taxes and any new or increased fees, assessments, taxes or other charges for the Services; we may also be required by federal, state or local laws or regulations to collect taxes or fees on services that you receive free or at discounted rates from Cbeyond, and you agree to pay these taxes or fees when billed. You are responsible for collect call, mobile usage and any other charges that may be billed to you after your Service end date. You are also responsible for any charges from third parties that arise when you use your phone number as a billing mechanism for third-party services (such as 900 or other information charges). Should you request any third-party services, you agree that we may release your name and billing information directly to that third party so that it can bill you directly for those services.

7. **Your Responsibilities.** In addition to your other responsibilities under this Contract, you agree that you and anyone using the Services will: (i) upon request, take all actions necessary in order to install and activate the Services; (ii) provide adequate facilities to house and operate our BeyondVoice or BeyondOffice equipment; (iii) NOT RESELL THE SERVICES TO ANY THIRD PARTY; (iv) comply with Cbeyond's Acceptable Use Policy described in Section 18 below; (v) comply with the duties outlined in the Cbeyond Installation Kit Overview; (vi) comply with all federal, state, and local laws, rules, regulations and tariffs that apply to the Services or this Contract; (vii) be solely responsible for establishing and maintaining security measures (including, without limitation, codes, passwords or other features) necessary to restrict access to your computers, servers or other equipment used in conjunction with the Services; (viii) be solely responsible for all fraudulent, unauthorized, illegal or improper use of the Services by persons accessing those Services through your facilities, equipment or Service Address; and (ix) authorize and identify to us in writing at least one individual to represent you on any aspect of the Services and your account (including all requests for moves, additions, deletions or

changes to the Services). You warrant and represent that a significant amount of your local exchange traffic at the Service Address will occur through our Services for the entire term of this Contract. You agree that you will notify us immediately of any Loss of Service or other problems with any of the Services by contacting Cbeyond Technical Support (tech.support@cbeyond.net or 1-866-424-5100).

8. Term and Termination.

8.1 This Contract is effective upon your signature and will continue in effect for the Service Period ("Initial Term") specified on the Service Order Contract. At the end of the Initial Term, this Contract will renew automatically for additional periods ("Renewal Terms") of one year each until either party gives written notice to terminate this Contract not more than 90 days and not less than 30 days before the end of the Initial Term or any Renewal Term; such written notice shall be effective for 90 days, and—if you have not ported your Services in their entirety to another carrier or otherwise disconnected your Services in their entirety within that 90 day period—the written notice of termination shall no longer have any force or effect and this Contract shall continue as if no such termination notice had ever been provided. At the end of the initial Service Period, the BeyondOffice and BeyondVoice Services will renew automatically for additional periods ("Renewal Terms") of one year each and the BeyondMobile Services will renew on a month-to-month basis. In the case of any renewal, you will be responsible to pay the charges and terms in effect on the day before renewal, plus then applicable fees, taxes and other charges as described in Section 6.6. Your BeyondVoice services must be active to maintain any BeyondOffice services that you may be purchasing; it is your responsibility to coordinate the disconnection of these services as we will not continue your BeyondOffice services after your BeyondVoice account has been terminated.

8.2 The initial Service Period for the BeyondOffice and BeyondMobile Services must be at least 24 months. You may purchase the BeyondOffice Services and the BeyondMobile Services so long as (a) there are at least 24 months remaining on the Initial Term of this Contract; or (b) you agree to extend the Initial or Renewal Term of this Contract to at least 24 months. Any change in the calling plan or features for the BeyondMobile Services at any time may also require you to extend the term of the BeyondMobile Services and this Contract. If and when this Contract or any BeyondVoice package offering ends or terminates, all BeyondOffice and BeyondMobile Services will also immediately terminate. If this Contract or your BeyondVoice, BeyondOffice or BeyondMobile Services terminate before the completion of the Initial Term or any Renewal Term of this Contract, "Early Termination Charges" will apply (as defined in Section 9).

8.3 You may terminate BeyondVoice or BeyondOffice Services (without liability for Early Termination Charges) if you experience a Loss of Service (as defined in Section 4.2 above) for that particular Service of more than 8 consecutive hours on two occasions or more in any calendar month and you notify us of each Loss of Service (of any duration) or any other problem with that Service immediately after that Loss of Service or problem first occurs. You may also terminate this Contract if we fail to comply with any other Cbeyond obligation under this Contract for 30 consecutive days after receiving written notice from you. In either case, you may terminate the affected BeyondVoice or BeyondOffice Service only if (a) your account is current before termination (i.e. no balance older than 30 days); (b) you and/or your equipment (including Mobile Devices and Services Related Products) did not contribute to the Loss of Service or to our failure to comply with this Contract, either directly or indirectly; (c) the last Loss of Service you rely on for invoking this termination right occurred within the preceding 60 days or your written notice of Cbeyond's failure to comply with a Contract obligation was delivered within the preceding 60 days and Cbeyond failed to comply with the obligation after such notice; and (d) you provide us with 30 days written notice of your intent to terminate your Services under this section. Such written notice shall be effective for 90 days, and—if you have not ported your Services in their entirety to another carrier or otherwise disconnected your Services in their entirety within that 90 day period—the written notice of termination shall no longer have any force or effect and this Contract shall continue as if no such termination notice had ever been provided. You may not cancel this Contract for any Loss of Service affecting your BeyondVoice and/or BeyondOffice services except as permitted in this Section 8.3. You must pay all charges due for each Service received until that Service is disconnected and for all charges incurred before the Service end date that may be billed to you after the Service end date.

8.4 You may terminate your BeyondMobile Services at any time (with liability for Early Termination Charges) by properly notifying us as required under our Cbeyond BeyondMobile Commitment ("Commitment") posted on the Internet at www.cbeyond.net. Cbeyond reserves the right to change the Commitment at any time without notice to you, and any changes to that Commitment will be effective upon posting on Cbeyond's Website. Prior to termination of the BeyondMobile Services, you may be able to transport ("port") your then current mobile number to a new mobile service provider. If you request your new mobile service provider to port a number from us and that new mobile provider requests us to do so, we will treat that request from your new provider as notice from you to immediately terminate the BeyondMobile Service for that mobile number upon successful port of that number. After any mobile number has been ported to your new provider successfully, you will not be able to use the BeyondMobile Services for that mobile number. You remain liable to pay all BeyondMobile Service charges through the service end date or, if later, when your mobile number has been successfully ported to your new carrier. Early Termination Charges apply upon any termination of the BeyondMobile Services or mobile number port to another carrier before the scheduled end date of the initial Service Period (of 24 months) or of any Renewal Term.

8.5 Cbeyond may terminate this Contract or suspend all or any Services if: (a) you fail to take any action that we have requested in order for Cbeyond to install or activate the Services; (b) you

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fail to pay any amount owing to us when due, and fail to pay all past due amounts within 10 days after notice from us; (c) you fail or anyone using any of the Services fails to comply with or violates our Acceptable Use Policy described in Section 18 below; (d) you fail to provide a new or increased deposit when requested; (e) you fail to replenish any deposit as requested; (f) you fail to perform or comply with any other obligation under this Contract and do not perform or comply with that obligation within 30 days after notice from us; (g) you are involved in or are the subject of any change-in-control, including any sale of your stock or assets, reorganization or merger; (h) you, or anyone using any of the Services, use or operate any Service in a manner that could, in our sole determination, result in harm to us, our Network, our mobile supplier's network, our reputation or other customers; (i) you, or anyone using any of the Services, use or operate any Services in a manner that, in our sole determination, is violating or could violate applicable law or the intended business use of that Service; or (j) we determine at any time, in our sole discretion, that your payment record, ability to make timely payments or creditworthiness has become unsatisfactory (even if you have provided or replenished any requested deposits). If we elect to terminate this Contract or any Services under subsections (a) through (j) above, you must pay Early Termination Charges as described in Section 9 below. If we elect to suspend any Services, you must pay all resumption and other charges described in the following Section 8.6.

8.6 If we elect to suspend Services under any circumstances pursuant to this Contract, you must pay all past due and other applicable charges (including the late payment fees and costs described in Section 8.4 above) and a resumption fee of \$40 before we will resume providing the Services. Before we resume providing your Services, we may also request satisfactory assurances from you on your future ability to pay for the Services, even if you have paid the required resumption fee and other amounts. These assurances may include a new or increased deposit to guarantee payment for future Services, among other things. If you fail, in our sole discretion, to provide satisfactory assurances or you fail to promptly make all required payments to resume your Services, you will be considered to have terminated this Contract. At such time, you must pay Early Termination Charges (as described in Section 9 below), in addition to all other amounts that you owe under this Contract.

8.7 Subject to the deposit policies described in Section 6.5, Cbeyond® will return the remainder of any deposit to you at the end of the term of this Contract. You will receive interest on the amount of the returned deposit if required by applicable law.

8.8 **Termination of Unused Applications.** As part of your Cbeyond Services, we will provide you with many applications, all of which require Cbeyond resources to provision and maintain. If we find that you have not used an application for 90 days, we reserve the right to turn off that application without warning to you and remove it from the bundle of services we provide. Any such application we remove as described in this paragraph will be reactivated as soon as commercially practicable following a request from you to do so.

9. **Early Termination Charges.** Except for your proper termination of this Contract under Section 8.3 above, in every other instance in which this Contract terminates before the end of the applicable Initial Term or Renewal Term, you must pay an early termination charge ("Early Termination Charge") as liquidated damages and a reasonable approximation of our loss from early termination. The amount of the Early Termination Charge will be calculated as follows:

9.1 If, after you have signed the Contract, termination occurs before we install our equipment or activate the Services, you shall be liable for \$1,000;

9.2 If termination occurs during the Initial Term of this Contract: (a) all outstanding nonrecurring fees plus (b) 100% of the Monthly Fees for each month, if any, remaining in the first year of the Initial Term, plus, if applicable, (c) 75% of the Monthly Fees for each month, if any, remaining in the second year of the Initial Term, plus, if applicable, (d) 50% of the Monthly Fees for each month, if any, remaining in the third year of the Initial Term;

9.3 If termination occurs after the Initial Term of this Contract: (a) all outstanding nonrecurring fees plus (b) 50% of the Monthly Fees for each month remaining in the 1 year of the applicable Renewal Term;

9.4 If termination also occurs as to any BeyondOffice® Services, then an additional amount equal to the lesser of: (a) \$500; or (b) \$50 for each month remaining in the Initial Term or any Renewal Term of this Contract as described in Section 8.2; and

9.5 If termination also occurs as to any BeyondMobile® Services, then an additional amount equal to the cancellation charge for your mobile plan then in effect.

10. **Disclaimer of Warranties.** CBEYOND IS PROVIDING THE SERVICES, EQUIPMENT, MOBILE DEVICES AND SERVICES RELATED PRODUCTS (INCLUDING MOBILE RELATED PRODUCTS) TO YOU ON AN "AS IS" BASIS WITHOUT ANY WARRANTY ASIDE FROM THOSE ASSOCIATED WITH YOUR MOBILE DEVICES, EXPRESS OR IMPLIED. CBEYOND DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY FROM USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, AMONG OTHERS. YOU ARE SOLELY RESPONSIBLE TO SELECT, USE AND DETERMINE THE SUITABILITY OF CBEYOND SERVICES, MOBILE DEVICES AND SERVICES RELATED PRODUCTS (INCLUDING MOBILE RELATED PRODUCTS), AND CBEYOND WILL HAVE NO LIABILITY FOR THAT SELECTION, USE OR SUITABILITY. CBEYOND DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CBEYOND DOES NOT REPRESENT THAT THE SERVICES, MOBILE DEVICES OR SERVICES RELATED PRODUCTS (INCLUDING MOBILE RELATED PRODUCTS) WILL MEET YOUR REQUIREMENTS OR PREVENT UNAUTHORIZED ACCESS TO YOUR COMPUTERS, NETWORK, SERVERS AND OTHER EQUIPMENT OR TO ANY DATA, INFORMATION OR FILES ON ANY OF THEM.

11. Limitations of Emergency 911 Services.

11.1 **General.** As with any telephone and/or data technology, there are certain circumstances under which 911 services delivered by Cbeyond may not function. These circumstances include—but are not limited to—the following: (A) the telephone device to which a particular telephone number has been assigned is moved to a location outside the premises where it was originally installed (Cbeyond does not offer, and your service does not include, any "nomadic" telephone or data services); (B) there is a loss of electrical power to the telephone and/or equipment necessary to maintain your broadband connection; or (C) there is an outage, degradation or other disruption to your broadband connection. Your signature on this contract is your acknowledgement that Cbeyond has informed you of these limitations and that you accept the services with these limitations.

11.2 **REQUIRED FEDERAL COMMUNICATIONS COMMISSION ("FCC") WARNING.** THE FCC REQUIRES THAT WE INFORM YOU OF POTENTIAL LIMITATIONS TO 911 SERVICES DELIVERED VIA YOUR BeyondVoice OR BeyondOffice SERVICE WITH SIP-CONNECT. 911 AND/OR E911 SERVICES WILL NOT BE AVAILABLE OR FUNCTION IF (A) THE TELEPHONE DEVICE TO WHICH A PARTICULAR TELEPHONE NUMBER HAS BEEN ASSIGNED IS MOVED TO A LOCATION OUTSIDE THE PREMISES WHERE THE TELEPHONE DEVICE WAS ORIGINALLY INSTALLED; (B) THERE IS A LOSS OF ELECTRICAL POWER TO THE TELEPHONE AND/OR TO EQUIPMENT NECESSARY TO MAINTAIN YOUR BROADBAND CONNECTION; or (C) THERE IS AN OUTAGE, DEGRADATION OR OTHER DISRUPTION TO YOUR BROADBAND CONNECTION. YOUR SIGNATURE BELOW TO THIS CONTRACT WILL BE YOUR ACKNOWLEDGMENT THAT CBEYOND HAS ADVISED YOU OF THESE LIMITATIONS AND THAT YOU ACCEPT THE SERVICES WITH THESE LIMITATIONS. CBEYOND WILL ALSO PROVIDE LABELS TO YOU THAT ALERT USERS TO THE LIMITATIONS IN THIS PARAGRAPH 11.2. THE FCC RECOMMENDS THAT YOU PLACE THESE LABELS ON OR NEAR THE TELEPHONE AND OTHER EQUIPMENT ASSOCIATED WITH YOUR BeyondVoice OR BeyondOffice SERVICE WITH SIP-CONNECT SERVICE.

11.3 **BeyondMobile® DOES NOT INTERACT WITH 911 AND OTHER EMERGENCY SERVICES IN THE SAME MANNER AS LANDLINE TELEPHONE SERVICES.** DEPENDING ON YOUR LOCATION, THE TYPE OF MOBILE DEVICES AND OTHER EQUIPMENT YOU USE, THE TYPE OF EQUIPMENT USED BY THE PUBLIC SAFETY ACCESS POINT OR OTHER APPLICABLE EMERGENCY SERVICES PROVIDER AND THE CIRCUMSTANCES AND CONDITIONS OF A PARTICULAR CALL, YOU MAY NOT BE CONNECTED OR YOUR PHONE NUMBER AND/OR LOCATION MAY NOT BE IDENTIFIABLE TO EMERGENCY SERVICE PROVIDERS. EMERGENCY 911 SERVICE THAT IS COMPATIBLE WITH THE FCC TECHNICAL REQUIREMENTS IS NOT AVAILABLE IN ALL AREAS, AND EVEN IN THOSE AREAS WHERE IT IS AVAILABLE, IT IS NOT ENTIRELY RELIABLE. MOREOVER, IF YOUR MOBILE DEVICES OR EQUIPMENT ARE NOT GPS-ENABLED, EMERGENCY SERVICES PERSONNEL MAY HAVE MUCH LESS PRECISE LOCATION INFORMATION. THE INFORMATION AVAILABLE TO EMERGENCY SERVICE PROVIDERS MAY ALSO BE LIMITED IF YOUR NUMBER OR NUMBERS ARE IN THE PROCESS OF BEING PORTED. BY YOUR SIGNATURE BELOW TO THIS CONTRACT, YOU ACKNOWLEDGE THAT EMERGENCY 911 SERVICE IS NOT AVAILABLE IN ALL AREAS, IS NOT COMPLETELY RELIABLE AND IS FURTHER LIMITED WHEN USING NON-GPS ENABLED MOBILE DEVICES OR EQUIPMENT OR DURING THE NUMBER PORTING PROCESS.

12. Your Sole Remedy against Cbeyond; Cbeyond Liability Limitations.

12.1 You agree that your sole remedy against Cbeyond for our failure to comply with this Contract will be to obtain the credit(s) provided in Sections 2 and 4 above or, if applicable, to terminate the affected BeyondVoice® or BeyondOffice Service as described in Section 8.3.

12.2 Cbeyond is not liable for any damages, including indirect, incidental, consequential, punitive or special damages relating to loss of data, profit, revenue or business or the loss, damage or destruction of any property, whether you, your assignee or any other transferee suffer that loss or damage and whether or not Cbeyond is informed in advance of the possibility of such loss or damage. If you purchase the Cbeyond Smart Start Application Set Up Tutorial ("Smart Start Tutorial"), Cbeyond will be installing software and making other changes to one or more computers at your service location; it is your responsibility to back up all software and data on your computer's hard drive(s) and/or any other storage devices before the Smart Start Tutorial. Cbeyond and/or its agents shall not be responsible at any time for any loss, alteration, or corruption of any software, data, or files. Cbeyond is not liable for the content, accuracy or quality of information transmitted through its equipment, facilities or Services or through the Mobile Devices or Services Related Products (including Mobile Related Products), and you agree to assume all risk of transmitting, receiving or using any such content or information.

12.3 Cbeyond is not liable for any injuries, death or loss to any person or for damage, loss or destruction of any property of any person as a result of Cbeyond's act or omission in developing, adopting, implementing, maintaining or operating any Emergency 911 or similar system or in identifying the telephone number, name, address, location or any other information on anyone accessing or trying to use or access the Emergency 911 or similar system. Cbeyond is not liable for errors or omissions in any information about you in any published directory. You agree to be solely responsible for ensuring the accuracy of any information about you in any published directory.

12.4 Cbeyond's sole liability to you for any claims, losses or damages caused by the Services or equipment or otherwise under this Contract are limited as described in this Section 12. You agree that these limitations are reasonable. You also acknowledge that without these limitations of liability, your Monthly Fee and other charges and fees under this Contract would

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be substantially higher. You further agree that the limitations on Cbeyond's liability in this Section 12 will apply in any action or proceeding against Cbeyond, whether based in contract, tort (including negligence or strict liability) or under any statute, law, rule or otherwise.

13. Your Liability for Cbeyond loss and damage. To the extent you are the cause of any loss, damages, or liabilities to Cbeyond, you agree to reimburse, compensate and pay Cbeyond for any losses, claims, damages, liabilities or penalties that Cbeyond or any of our officers, directors, agents, successors or assigns may incur from your purchase or use of the Services and our equipment, except to the extent that any loss, damages or liabilities are caused by Cbeyond's gross negligence or willful misconduct.

14. Force Majeure. We will not be in violation of this Contract or otherwise liable for any delay, failure to perform or equipment or property damage, loss, destruction or malfunction or any consequence thereof, caused in whole or in part by anything beyond our reasonable control, including, without limitation, fire, earthquake, flood, weather, acts of God, public health emergency or pandemic, labor disputes, utility curtailments, power failures, cable cuts, failure caused by telecommunications or other Internet provider(s), Mobile Devices or other Services Related Products (including Mobile Related Products), worms, Trojan horses, viruses or other destructive code or software, explosions, civil disturbances, terrorism, vandalism, governmental actions or shortages of equipment or supplies (collectively, "Event of Force Majeure").

15. Publicity. Neither party will use the other's name, logo, product names or trade or service marks, or refer to the other directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purpose without the other's prior written approval.

16. Maintenance. We may perform maintenance that may affect the availability or functionality of all or part of the Services at any time. Any impact on the Services as a result of maintenance will not be deemed our breach of this Contract or the Network Availability Commitment and will not entitle you to any credit, refund or right to terminate this Contract or any affected Service.

17. Relocation of Services. If you desire to transfer your service from your Service Address to a different location, you must request that move in writing to us at least 6 weeks in advance. If your new location is within our serving area, you and Cbeyond@ must enter into a new contract with a term of no less than the Initial Term. That new contract may include additional or different installation, recurring and other charges and fees. In addition, we may assess you the following relocation fee each time you change any service location: \$500 for BeyondOffice@ services and \$500 for each 1.5 Mbps of bandwidth you are having delivered to your new service location. If your new location is not within our serving area or Services end at the prior Service Address and a new agreement for the new location is not entered into by the parties, you will be deemed to have terminated this Contract and Early Termination Charges will apply.

18. Acceptable Use Policy and Unlimited Voice/Data Plans. You agree to comply at all times with our Acceptable Use Policy ("AUP") which is posted on the Internet at www.cbeyond.net and is incorporated in this Contract by reference. We may change the AUP at any time without prior notice to you, and any AUP amendments will be effective upon posting on our website. When offered for sale, all Cbeyond unlimited calling and data plans are subject to restrictions set forth in the AUP regarding the uses for which they may be employed.

19. Additional Services. You may order additional or different Cbeyond Services after the date of this Contract through our website or by email, facsimile or telephone call to us. Except to the extent expressly governed by another agreement you sign with us, any additional Services that you order through whatever means will be governed by these Terms and Conditions as modified by explicit terms for such additional Services posted on the Internet at www.cbeyond.net and incorporated herein by reference. Your use of any additional Services will be deemed to be your consent to comply with any additional terms and conditions.

20. General.

20.1 This Contract may only be amended by a written document that is signed by you and an authorized Cbeyond employee at the level of Sales Vice President or above or a Customer Solutions Advisor, Field Solutions Advisor, Inside Sales Representative or Retention Representative at the level of manager, director or above. This Contract contains our entire agreement about the Services and supersedes any prior agreements, understandings or arrangements, both written and oral.

20.2 You may assign your rights under this Contract as part of a change in control or ownership of your business or the entity that has signed this Contract with us provided that (a) you are current on all payments (i.e. no balance older than 30 days) and (b) the person(s) to obtain your rights under this Contract (i) agree(s) with us in writing to assume all of your obligations under this Contract and (ii) meet(s) the creditworthiness and other preconditions that would apply at the time to a new customer under similar circumstances. If all preconditions in (a) and (b) are not met, we may treat the Contract as terminated under section 8.5, above.

20.3 Any party to this Contract will be considered to have given up or waived its right to require strict performance and compliance by the other party only when it has signed a written agreement or acknowledgement that waives that strict performance and compliance in any instance. Any written waiver in any one instance will not apply to any other or later non-performance or non-compliance by the other party.

20.4 Arbitration. Except in an action for injunctive relief, arbitration shall be the sole remedy available to the Parties to this Contract to resolve any controversy or claim arising out of or relating to this Contract, the breach thereof, or the commercial relationship between the parties, including, without limitation, any claim based upon or arising from an alleged tort or the alleged violation of any statute. Such arbitration shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date of this Agreement, except that the arbitration need not be administered or conducted by the American Arbitration Association. Any remedy that would be available from a court of law or equity shall be available from the arbitrator(s). Judgment on the award rendered by the arbitrator(s) may be rendered in any court having jurisdiction thereof. Cbeyond and you acknowledge that this Agreement involves interstate commerce and that all arbitration and related proceedings, including, without limitation, confirmation proceedings, conducted hereunder shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1, et. Seq. The arbitration hearing and all proceedings in connection therewith, including, without limitation, confirmation proceedings, shall take place in Atlanta, Georgia. The arbitration hearing shall be commenced within ninety (90) days of the filing of a Demand for Arbitration by either party, and the award shall be rendered within thirty (30) days of the conclusion of such hearing. Cbeyond and you hereby expressly agree that this paragraph constitutes a valid agreement to arbitrate.

20.5 Injunctive Relief and Governing Law. In any action for injunctive relief, each party consents to the exclusive jurisdiction of the state and federal courts having jurisdiction in the county of your Service Address or Cobb County, Georgia. This Contract will be governed by and interpreted in accordance with the laws of the State of Georgia, without regard to conflict of laws principles, and is subject to any federal, state or local tariffs that may apply. If any conflict should arise between the terms of this Contract and an applicable tariff, you agree that the terms of the applicable tariff shall control.

20.6 You acknowledge that future rules, tariffs, regulations, orders, treaties or other laws promulgated, enacted, or entered into by international, federal, state or local legislatures, agencies, governments or other regulatory bodies may affect our respective rights or obligations under this Contract. If any such future action adversely affects Cbeyond's rights or obligations under this Contract, then we may require, upon 30 days notice to you, that the parties renegotiate this Contract in good faith to address the effect of such actions. Your failure to do so will be deemed to be your termination of this Contract, subjecting you to Early Termination Charges as described in Section 9 above.

20.7 If an arbitrator or court should declare any one provision of this Contract to be invalid, then the other provisions will remain in effect and the parties will work in good faith to agree to a replacement provision that has the same or similar intent as the original provision. This Contract is for the sole benefit of you and Cbeyond, and no other person.

20.8 All notices under this Contract must be in writing, with all notices to us to be sent to: Cbeyond Communications, LLC, Attn: Customer Care, 320 Interstate North Parkway, Suite 300, Atlanta, GA 30339 or to any other address that we may notify you or post on our web site.

20.9 The Section headings used herein are for reference only and will not enter into the interpretation of this Contract.

Customer Acceptance

BY SIGNING BELOW, THE PERSON SIGNING ON BEHALF OF CUSTOMER PERSONALLY REPRESENTS AND WARRANTS TO CBeyond THAT HE OR SHE HAS THE AUTHORITY AND POWER TO SIGN ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS FOR SERVICE AS DESCRIBED IN THE ATTACHED TERMS AND CONDITIONS AND SERVICE ADDENDUM(S), WHERE APPLICABLE. CUSTOMER UNDERSTANDS THAT IF IT TERMINATES THIS AGREEMENT PRIOR TO SERVICE ACTIVATION, CUSTOMER WILL OWE CBeyond AN EARLY TERMINATION FEE, AS DESCRIBED IN THE TERMS AND CONDITIONS. CUSTOMER AUTHORIZES CBeyond TO OBTAIN BILLING INFORMATION AND CUSTOMER SERVICE REPORTS WITH RESPECT TO CUSTOMER'S TELEPHONE NUMBERS, AS WELL AS CUSTOMER'S CREDIT INFORMATION. THIS AGREEMENT IS ACCEPTED BY CBeyond ON THE DATE INDICATED BELOW, AND THE SERVICE PERIOD SHALL BEGIN UPON THE INITIATION OF SERVICE.



Signature	Customer Name (printed)	Title (printed)	Date
Authorized Cbeyond Representative Signature	Authorized Cbeyond Representative Name (printed)	Title (printed)	Date

Customer Information

LEGAL COMPANY NAME / D.B.A. City of Brookhaven	MAIN PHONE # 404-637-0470	PRIMARY CONTACT NAME Chris Pike
PACKAGE SOLD	NUMBER OF TELEPHONE LINES	DATE CONTRACT SIGNED

Additional Information Required For Activation

1. Contacts Please provide Contact information for the person who will be handling the Installation Verification with your Service Coordinator. Very important to give Alternate/Emergency contact numbers and email address.

Who handles the installation scheduling?

CONTACT NAME Lori Roller	PHONE # 678-672-1508	MOBILE # 770-377-3103	EMAIL ADDRESS: LRolleri@Interdev.com
REQUESTED INSTALLATION DATE STANDARD <input type="checkbox"/>	DATE REQUESTED IF GREATER THAN 45 DAYS. ENTER DATE AS MM/DD/YYYY.		

2. Vendors Need ALL Phone & LAN vendor information. If they are a sales referred vendor then a site survey is REQUIRED. You are responsible for charges associated with services of your phone and LAN vendor.

Who is the telephone vendor that will be present during the installation?

COMPANY NAME InterDev	CONTACT NAME Lori Roller	DID SALES REFER THIS VENDOR TO THE CUSTOMER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
CONTACT PHONE # 678-672-1508	CONTACT MOBILE # 770-377-3103	CONTACT E-MAIL ADDRESS LRolleri@Interdev.com
VENDOR ACCESS LEVEL * None <input type="checkbox"/> Limited <input type="checkbox"/> Admin <input checked="" type="checkbox"/>		

Who is the LAN (Local Area Network) vendor that will be present during the installation?

COMPANY NAME InterDev	CONTACT NAME Gary Nichols	DID SALES REFER THIS VENDOR TO THE CUSTOMER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
CONTACT PHONE # 770-643-4400	CONTACT MOBILE # (770) 337-5900	CONTACT E-MAIL ADDRESS GNichols@Interdev.com
VENDOR ACCESS LEVEL * None <input type="checkbox"/> Limited <input type="checkbox"/> Admin <input checked="" type="checkbox"/>		

*Vendor's access to Customer Care & CbeyondOnline. **Limited** = can make non-billing changes to account. **Admin** = can make billing & non-billing changes to account.

3. Premise Is the location an existing office and does it currently have wireline phone services? Any issues with the site that could help the Service Coordinator?

Premise Questions

	Y	N
IS THIS PREMISE A NEW CONSTRUCTION?		
DOES THIS PREMISE HAVE WIRELINE PHONE SERVICE TODAY?		

4. SIPconnect IP PBX or Cloud PBX The IP PBX (Phone System) must be certified interoperable within BeyondVoice with SIPconnect. For a complete list, visit <http://platform.cbeyond.net/currentplatform>. Equipment should be unpacked and installed with handsets configured prior to the Cbeyond Activation Appointment to avoid rescheduling.

SIPconnect IP PBX or Cloud PBX Information

IP PBX MANUFACTURER:	IP PBX MODEL:	CUSTOMER PROVIDING THEIR OWN FIREWALL? <input type="checkbox"/> Yes <input type="checkbox"/> No
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5. Voicemail Does the customer currently have any voicemail? Do they need Cbeyond voicemail?

6. DNS Provide a registered domain name which can be transferred to Cbeyond's hosting server, User Name, Password and Current Registrar. If you are transferring 2 or more domains, list these on separate copies of this worksheet.

Domain Name Information

DOMAIN NAME: _____

Access Domain.com at <http://www.domain.com>, to check availability of requested domain names.
Cbeyond supports .com, .net, .org, .name, .info, .us, .mobi, and .biz top-level domains.
Please go to www.whois.domaintools.com or www.domainwhitepages.com to gather critical DNS information.

Select Action To Be Taken With Listed Domain Name

REGISTER NEW DOMAIN:	<input type="checkbox"/>	PURCHASE AND REGISTER A NEW DOMAIN WITH CBeyond
TRANSFER DOMAIN REGISTRATION:	<input type="checkbox"/>	CBeyond WILL INITIATE THE TRANSFER OF DOMAIN REGISTRATION USING THE CUSTOMER'S ACCOUNT INFORMATION, AFTER THE CONFIGURATION OF ANY CBeyond APPLICATIONS TO BE USED WITH THE DOMAIN(WEB HOSTING, EMAIL) IS COMPLETE.
DOMAIN NAME PROVIDER:	DOMAIN NAME PROVIDER	USERNAME
		PASSWORD
MANAGE DNS RECORDS:	<input type="checkbox"/>	CUSTOMER WILL KEEP DOMAIN WITH CURRENT REGISTRAR, POINT NAME SERVERS TO CBeyond AND CBeyond WILL MANAGE RECORDS.
HOST SERVICES (EMAIL / WEB HOSTING):	<input type="checkbox"/>	CUSTOMER ONLY WANTS EMAIL AND/OR WEB HOSTING WITH CBeyond AND WILL KEEP DOMAIN WITH CURRENT REGISTRAR
WEB HOSTING PROVIDER:	DOMAIN NAME PROVIDER	USERNAME
		PASSWORD
DOMAIN ADMINISTRATIVE CONTACT:	CONTACT NAME	PHONE NUMBER
WEBMASTER NAME AND CONTACT INFO:	CONTACT NAME	PHONE NUMBER

Select Cbeyond Applications To Be Used With Listed Domain Name

CBeyond APPLICATIONS: None Web Hosting Email Hosting Hosted Microsoft Exchange

Cbeyond will assist the customer with the selected applications in regards to the domain action requested above.

Customer Information

LEGAL COMPANY NAME / D.B.A. City of Brookhaven	MAIN PHONE # 404-637-0470	PRIMARY CONTACT NAME Chris Pike
PACKAGE SOLD	NUMBER OF TELEPHONE LINES	DATE CONTRACT SIGNED

7. Email Who currently hosts email?
Will Cbeyond be hosting email?

Email Information

8. Email If customer is hosting an email server, is a PTR record (reverse DNS) needed? Yes No

Current email client/method of email access:

Email addresses we will be adding to this domain:

Email aliases we will be adding per email address:

9. HME Provide the number of workstations at your location which will require installation of MS Outlook

of Computers (to use Cbeyond apps)
Computer Operating System(s) & Version
Type of Antivirus Software
Current File Backup Method

10. Fax to Email Provide email addresses which will receive faxes

Fax to Email Number	Email Address to Receive Faxes (required for each Fax to Email number ordered)	Do you want a Toll Free # to ring to this Fax to Email #? (circle one; additional Toll Free #s are \$2 per month)	Will the Toll Free Number be new or ported? (required for Toll Free; circle one)	Toll Free Number (required only if ported in; RespOrg form required for each ported number)
1		<input type="checkbox"/> Yes / <input type="checkbox"/> No	<input type="checkbox"/> New / <input type="checkbox"/> Port	
2		<input type="checkbox"/> Yes / <input type="checkbox"/> No	<input type="checkbox"/> New / <input type="checkbox"/> Port	
3		<input type="checkbox"/> Yes / <input type="checkbox"/> No	<input type="checkbox"/> New / <input type="checkbox"/> Port	

11. Primary Directory Listing Does the customer need to designate an alternative address for the primary directory listing? The customer may incur charges for some DL items.

Listed Telephone Number: **404-637-0500** Yellow Page Heading: _____
 Company / Caption Name: **City of Brookhaven** Street Name: **Ashford Center North**
 Street Number: **200** Street Prefix: _____ Suite/Floor/Room: _____
(N, S, E, W, SE, SW, NE, NW) Additional \$5/mo Charge Applies for Suite/Floor/Room Listing
 Street Suffix: _____ Street Thoroughfare: _____ City: **Dunwoody**
(N, S, E, W, SE, SW, NE, NW) (Rd, St, Pkwy, Ave, Blvd, Etc.)
 Foreign Listing Book(s): _____
 Would you like to omit the address from your listing? Yes No Special Listing: _____
Select Special Listing type. Additional Charges Apply depending on type selected.

12. Add'l Directory Listing Does the customer need an additional directory listing? The customer may incur charges for some DL items.

Listed Telephone Number: _____ Yellow Page Heading: _____
 Company / Caption Name: _____ Street Name: _____
 Street Number: _____ Street Prefix: _____ Suite/Floor/Room: _____
(N, S, E, W, SE, SW, NE, NW) Additional \$5/mo Charge Applies for Suite/Floor/Room Listing
 Street Suffix: _____ Street Thoroughfare: _____ City: _____
(N, S, E, W, SE, SW, NE, NW) (Rd, St, Pkwy, Ave, Blvd, Etc.)
 Foreign Listing Book(s): _____
 Would you like to omit the address from your listing? Yes No Special Listing: _____
Select Special Listing type. Additional Charges Apply depending on type selected.

13. Billing Is the customer aware of estimated setup and monthly charges?
Does the customer understand that their first bill will be pro-rated?

14. Smart Start Set Up Does the customer understand the role of the Smart Start team?

- Smart Start Advisor can provide a single visit to assist customer in setting up Cbeyond applications and provide guidance on use.
- To transition existing services, customer must provide access (or login credentials) for any current web hosting and domain accounts.
- Customer must provide access to PCs and 1-3 hours of availability for the Smart Start visit
- Customer is still required to secure a LAN vendor for Activation Date who is responsible for Network/hardware connections.



By your signature below, you acknowledge that you will need to provide this important information to Cbeyond and to its Activation Team in preparation for activating services with Cbeyond.

CUSTOMER SIGNATURE	CUSTOMER NAME (PRINTED)	TITLE (PRINTED)	DATE

Customer Information

LEGAL COMPANY NAME / D.B.A. City of Brookhaven		MAIN PHONE # 404-637-0500		MAIN FAX # 404-637-0501	
SERVICE ADDRESS 200 Ashford Center North		SUITE, FLOOR OR ROOM # Suite 150	CITY Dunwoody	COUNTY GA	ZIP 30338
PRIMARY CONTACT NAME Chris Pike		PRIMARY CONTACT TEL # 404-637-0470		PRIMARY CONTACT FAX # 404-637-0501	CURRENT LOCAL SVC PROVIDER Cbeyond

By signing below, I am authorizing Cbeyond Communications to become my new telephone service provider in place of my current telephone company(ies) (listed above) for the provision of the following type(s) of service.

Service

Local Exchange Service IntraLATA Toll Service Domestic Long Distance Service International Long Distance Service

I authorize Cbeyond Communications to act as my agent to make this change happen, and direct my Current Local Service Provider to work with the new provider designated above to effect the change. Further, I understand that only one telephone company may be designated as my preferred carrier for each type of service for each telephone number.

If I later wish to return to my Current Local Service Provider, I may be required to pay a reconnection charge to that company. I also understand that Cbeyond Communications may have different calling areas, rates, and charges than my Current Telephone Company, and that by signing below I indicate that I understand those differences (if any) and am willing to be billed accordingly.

I authorize Cbeyond Communications to provide the services selected above to the Billing Telephone Numbers ("BTN") listed below, including any and/or all other telephone numbers associated with the listed BTN(s), and no others:

Outbound Caller ID Company Name

Outbound Caller ID Company Name:

NOTE: Up to 14 characters are permitted.

ATTENTION: This is the name that displays on the destination caller ID unit when you make outbound calls. This name is REQUIRED and there is no charge to display your company name on your outbound calls.

Telephone Number (NPA) NXX- XXXX OR if requesting a new Cbeyond number, check a row in the "New" column.	New	BTN	Main Trunk Group TN	Fax/Modem / Credit Card	Port	Disconnect	Remain With Current Provider	Check if line is in hunt group	RCF
TN	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1 404-637-0500									
2									
3 port block of 300 DIDs									
4 acct# 56660 - InterDev									
5									
6									
7									
8									
9									
10									

Direct Inward Dial (DID) Numbers

Customer MUST have a PBX in order to subscribe to DID.

DID Block	(Area Code) Prefix (NPA) NXX-	Range Each range includes 10 DID #'s. Leave blank if ordering new DID #'s.		Port	Disconnect	RCF	Remain With Current Provider
		FROM (XXXX)	TO (XXXX)				
1	404-637	0460	0759	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2							
3							

Analog Ports (for SIPconnect Customers Only)

Specify Up To 8 Fax/Modem Phone Numbers To Connect To Analog Ports On The IAD. First 2 ports included; additional \$ 10 per month

<input type="text"/>	<input type="text"/>	<input type="text"/>
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I further understand and agree that in the event I **DO NOT** want **ALL** telephone numbers associated with a BTN listed above switched to Cbeyond Communications, I must attach a list of **EACH** telephone number to be switched to Cbeyond Communications.

By signing below, I certify that I have read and understand this Letter of Agency, I further certify that I am at least eighteen (18) years of age, and that I am authorized to change telephone companies for services to the telephone number(s) listed above

Customer Acceptance

BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES AND AGREES THAT (1) INFORMATION PROVIDED IN THE SERVICE APPLICATION AND AGREEMENT IS CORRECT, (2) CUSTOMER HAS MADE APPLICATION FOR SERVICE BY CBeyond, (3) CUSTOMER HAS READ THE FOREGOING TERMS AND CONDITIONS IN CONNECTION WITH THIS SERVICE APPLICATION AND AGREEMENT AND AGREES TO BE LEGALLY BOUND THEREBY AND (4) CUSTOMER HAS READ THE FOREGOING LETTER OF AGENCY AND AGREES TO BE LEGALLY BOUND THEREBY.

	SIGNATURE	DATE
	<input type="text"/>	<input type="text"/>

CBeyondSM TOLL FREE INBOUND RESPONSIBLE ORGANIZATION FORM (C)

Customer Information

LEGAL COMPANY NAME / D.B.A. (as listed on current toll free bill)	BILLING CONTACT NAME Chris Pike	CBEYOND ACCOUNT NUMBER OR BTN		
BILLING ADDRESS (as listed on current toll free bill)	CITY	STATE	ZIP	

Important Note: A Toll Free number is transferred to Cbeyond after BeyondVoice service is installed. This process takes up to five business days to complete and you will have Toll Free traffic with your previous provider until the transfer is complete.

Inbound Information

Carrier of Existing Toll-Free Number <small>(Leave blank for NEW 800#'s)</small>	Toll-Free Number(s) <small>(Leave blank for NEW 800#'s)</small>	Ring To BTN/WTN <small>(npa-nxx-xxxx)</small>	Current Resporg <small>(Office Use Only)</small>	New Resporg <small>(Office Use Only)</small>	Toll-Free Directory Listing Company Name Listed <small>(Add'l Charges Apply for Listing)</small>
new	new				Listing 1: Listing 2: Listing 3:
new	new				Listing 1: Listing 2: Listing 3:
new	new				Listing 1: Listing 2: Listing 3:
					Listing 1: Listing 2: Listing 3:
					Listing 1: Listing 2: Listing 3:

Thank you for selecting Cbeyond Communications ("Cbeyond") to be your Toll Free service provider.

By signing this Toll Free Inbound Responsible Organization Form Authorization ("Authorization"), you agree that Cbeyond is authorized to change your Toll Free number(s) from your current provider to Cbeyond in accordance with the following items:

- 1) Cbeyond will use your current Toll Free number(s) listed above to provide you with Cbeyond's Toll Free number service as detailed in the Cbeyond long-distance services order forms signed by you.
- 2) The conversion date of your Toll Free number service is subject to the timely cooperation of your current Toll Free number service provider.
- 3) This request for a Responsible Organization Change to Cbeyond does not constitute an order to disconnect service with your existing carrier(s).

This authorization is effective and binding between the parties on the date Cbeyond receives this Authorization signed by you unless you receive written notice from Cbeyond to the contrary within 30 days of such date. This Authorization shall remain effective until such time as it is revoked in writing. You represent that you are the person legally authorized to make this change.

SIGN HERE

Agreed to by:

CUSTOMER SIGNATURE	CUSTOMER NAME	DATE
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Remarks:

THINGS YOU NEED TO DO

(CUSTOMER COPY)

Below is a quick overview of your installation responsibilities.
Please refer to the Installation Kit at Cbeyond.net/install for more detailed requirements.

ORDER VERIFICATION

- Review Service Order Contract with Cbeyond Service Coordinator and confirm that you have access to demarcation point on the circuit delivery date
- Waitlist Cbeyond

CIRCUIT DELIVERY

- Work with your Cbeyond Service Coordinator to schedule install, Smart Start Visit and Activation dates
- Arrange a site survey with your LAN and Phone vendors to determine if you will need equipment or infrastructure changes
- Accept your order and verify your services via CbeyondOnline
- Ensure your site preparation and equipment are ready
- Have a point of contact available to work with your Phone and LAN Vendor(s) so they can complete the Cbeyond phone installation checklist sent to them by Cbeyond

INSTALL

- Provide access to your site for installers (8a.m. – 5p.m.)
- Have a point of contact available during router installation and confirm your vendor is working from the checklist sent to them by Cbeyond

SMART START

- You or your point of contact is to work with the Smart Start Advisor to set up various Cbeyond applications
- Prior to your Smart Start visit, please have the following information available so that the Cbeyond representative can assist in the transfer of your Web hosting/Email services. Provide the information below:
 - DNS hosting - new, transfer, email hosting
 - Web hosting - username and password
 - Email - Hosted Microsoft Exchange - Basic and Complete

ACTIVATION

- You or your point of contact is to be onsite during the takeover
- Confirm that all services are working before obtaining sign-off and releasing your vendors
- Work with your vendor(s) to configure any phones, PBX, browsers, routers, or desktops

POST-ACTIVATION

- | | |
|-----------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Work with your vendor to configure your services for your employees during the cutover | <input type="checkbox"/> Add your vendor(s) as authorized contacts for your Cbeyond account |
| <input type="checkbox"/> If you have mobile services, transfer your mobile numbers | <input type="checkbox"/> Cancel service with your previous providers |
| <input type="checkbox"/> Prepare to arrange Post-Activation visit | <input type="checkbox"/> Review your first bill sample on Cbeyond Online |

You will receive a survey from Cbeyond via email. We encourage you to participate as your response is valued and extremely important in helping us improve our customer experience.

CUSTOMER ACKNOWLEDGEMENT

I understand my installation responsibilities.

Name _____

SIGN HERE

Signature _____ Date _____

If you are moving to a new location, please read the following items to keep your installation moving forward.

Important items to consider regarding installation of your broadband connection and porting of your numbers in regards to the Local Bell Carrier and your current providers:

A) To provide our BeyondVoice® or BeyondOffice™ Services, the Local Bell Carrier first needs to install the broadband connection and Cbeyond install equipment at your Service Address. We will need your exact address in order to work with the broadband installers, that includes building or suite numbers. The Local Bell Carrier's installation and dates of delivery are not guaranteed and may vary due to their need to upgrade their facilities feeding your service address. Certain size requirements may have to be met to complete the broadband installation up to and including certified ground wire, backboard to mount the broadband connection and conduit and pull string for the Bell Carrier to use during installation. Failure to have your site ready for the Local Bell Carrier may result in a delay of your installation. Please refer to your Service Coordinator for specific requirements that vary by market.

B) When transferring numbers from your current provider, obstacles may occur beyond Cbeyond's control. To help prevent these obstacles and further billing please ensure that all of your paperwork is completed with all numbers addressed to be ported, remain on your current carrier or disconnect. Cbeyond is not responsible for any numbers omitted from the order or any additional billing by your current provider.



December 20, 2012

City of Brookhaven
200 Ashford Ctr N Ste 150
Dunwoody, GA 30338

Cbeyond Communications, LLC (Cbeyond) provides this addendum ("Addendum") to City of Brookhaven ("Customer" or "you") in accordance with the amendment procedures described in Paragraph 20.1 of your Service Order Contract Terms and Conditions ("Terms and Conditions").

With respect to the provisions of section 2.0 of the Agreement: The Customer is declining the Smart Start Total Service. The Smart Start Total Service includes up to 3 hours of onsite application tutorials and set up. The normal cost for this service is \$199, but with the removal of the Smart Start visit Cbeyond will reduce this cost to \$0.

Your Cbeyond account must be paid current and you are responsible for any and all charges up to the point of service disconnection. All other terms and conditions in the Services Order contract apply.

Cbeyond Communications, LLC

City of Brookhaven

(Signature)

(Signature)



(Name-Printed)

(Name-Printed)

(Title)

(Title)

(Date)

(Date)



12/21/2012

**City of Brookhaven
200 Ashford Ctr N Ste 150
Dunwoody, GA 30338**

Cbeyond Communications, LLC (Cbeyond) provides this addendum ("Addendum") to **City of Brookhaven** ("Customer" or "you") in accordance with the amendment procedures described in Paragraph 20.1 of your Service Order Contract Terms and Conditions ("Terms and Conditions"). **If Customer is executing contracts for multiple locations, a separate copy of this Addendum must be executed for each Contract.** In the event of a conflict between this Addendum and the Contract, the contents of this Addendum shall control. More specifically, the Contract is hereby amended as set forth below:

With respect to the provisions of sections 6.1 of the Agreement: In the event the Customer signs a one year service agreement for a Beyond Voice 50 Mbps Fiber Package Office Edition, the Customer is eligible to receive a monthly product discount of \$375 on the price of the Beyond Voice Package Office Edition.

This discount offer available only to the qualified location listed on this addendum. Does not include taxes. The Beyond Voice Package three year agreement must be signed and submitted by 12/31/12. Cbeyond reserves the right to modify or remove the discount in the event that you remove any services from the package. In order for each location to qualify for the discount, a copy of this addendum must accompany each of the signed orders.

All other Terms and Conditions apply in the Service Order Contract.

Cbeyond Communications, LLC

City of Brookhaven



(Signature)

(Signature)

(Name-Printed)

(Name-Printed)

VPGM

(Title)

(Title)

12/21/2012

(Date)

(Date)

01-DEC12MRT-6049



Dynamic IP

Customer Information

Customer Name	THE CITY OF BROOKHAVEN	EAN	4381029
Install Street Address	200 ASHFORD CTR, N 150	City, State, Zip	DUNWOODY, Georgia , 30338-0000
Main Telephone Number	(404)637-0500	Market	ATLANTA
Contact Name	Quote Request	Proposal ID	1985392
Account Representative	Johnny Edmond	Proposal Type	New
Dealer Name	Interdev LLC-FF	Term	3 Years

Bundled Services	Total Qty	Price/Unit	Total Price	Adjusted Price
Analog Line	4	--	--	--
ISDN PRI (B+D Channels)	32	--	--	--
Bandwidth	50Mbps	--	--	--
Transport Ethernet	1	--	--	--
Total Services			\$1,988.00	\$1,795.55

Features	Included	Total Qty	Price/Unit	Total Price	Adjusted Price
Dynamic IP Feature Package					
Feature Package	--	1		\$40.00	\$0.00
Voice Local Features					
Caller ID	32	32		\$0.00	\$0.00
DID Numbers	20	300		\$56.00	\$0.00
Directory Assistance Calls	1	1		\$0.00	\$0.00
Directory Listing	1	25		\$48.00	\$0.00
Fax Services					
Fax300	--	1		\$9.99	\$7.99
Voice Long Distance Features					
Toll Free	2	3		\$5.00	\$5.00
Long Distance Blocks (1000 minutes)	1	2		\$32.00	\$32.00
Long Distance InterState	--	1		\$.05/min	\$.035/min
Long Distance IntraLATA	--	1		\$.05/min	\$.035/min
Long Distance IntraState	--	1		\$.05/min	\$.035/min
Long Distance Minute	--	1		\$.05/min	\$.035/min
Voice Conferencing Features					
Audio and Web Bucket (100 minutes)	1	1		\$0.00	\$0.00
Reservationless Audio	--	1		\$0.08/min	\$0.08/min
Web Conferencing	--	1		\$0.14/min	\$0.14/min
Internet Web Services					
DNS	1	1		\$0.00	\$0.00
Professional E-commerce Package	--	1		\$24.99	\$24.99
Bandwidth Data Features					

Features	Included	Total Qty	Price/Unit	Total Price	Adjusted Price
Data Equipment Maintenance	--	1		\$10.95	\$10.95
Block of 16 IPs		1		\$16.00	\$16.00
Miscellaneous Features					
Account Detail Charge	--	1		\$5.95	\$5.95
Total Features					\$102.88

Other Charges (Non-Recurring)	Included	Total Qty	Price/Unit	Total Price	Adjusted Price
Installation Charges				\$1,000.00	\$.00
Total Other Charges (Non-Recurring)					\$.00

Total Solution	Total Price	Adjusted Price
Total Monthly Recurring Charges		\$1,898.43
Total Non-Recurring Charges		\$.00

In the event Customer makes changes to its services during the initial term of agreement, Customer is responsible for maintaining a Minimum Monthly Commitment of 85% of the Total Monthly Recurring Charges.

Minimum Monthly Commitment \$1,613.67

Service Information

Unless an Upsell is specifically indicated above, if this is a change or addition to Services currently received by Customer at the service location listed on this Proposal, this Proposal supersedes the existing Proposal or Service Schedule related to the location. For Upsells, this Proposal only shows the additions or changes to Services provided at the applicable service location. In all instances, the term set forth herein begins upon the earlier of (i) the Installation Date (which may be the date administrative access to certain software-based is granted to Customer); or (ii) 30 days after delivery of the applicable facility or equipment to the Customer premises (if the delay in connection of the facility and/or equipment is due to Customer or its agent) ; however, for existing customers, any rate or Product changes ("Changes") will be effective at the start of the next billing cycle after the Changes have been made, which could be at least two bill cycles from the date of this Proposal.

In the event Customer's Services include fees associated with installing enterprise data products, including but not limited to, Ethernet Internet Service, MPLS, Hosted VoIP, VoIP and Data, Managed Security or Managed Router, and unless a Proposal provides otherwise, fifty percent (50%) of Customer's non-recurring costs ("NRCs") shall be paid by Customer on the Effective Date, prior to Company starting any work to install the Services. The remaining fifty percent (50%) of the NRCs shall be paid upon receipt of the first invoice after billing has started pursuant to this Section. Customer's NRCs, if any, will be identified in the Proposal.

Authorized Windstream Representative Name _____
 Authorized Windstream Representative Signature _____ Date _____
 Authorized Customer Name _____
 Authorized Customer Signature _____ Date _____

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CITY OF BROOKHAVEN

Code Compliance Sweeps and Inspections

Article

Version 2013.1.14

City of Brookhaven
Policies

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Code Compliance Sweeps and Inspections

I. Purpose

This policy has been written to establish guidelines and procedures governing the mobilization of various department personnel for the purpose of conducting unscheduled code compliance sweeps and inspections of multi-unit residences and commercial structures in the City of Brookhaven.

These inspections are necessary to safeguard the health, safety and welfare of the citizens of Brookhaven. This effort is effective only with the coordination of multi jurisdictional agencies and personnel. The Director of Community Development, in conjunction with the Code Enforcement Manager shall be the point of contact for all communication regarding the planning & coordination of these operations.

II. Definitions

When used in this policy, the following words, terms and phrases, and their derivations, shall be the meaning ascribed to them in this section, except where the context clearly indicates a different meaning,

A. **Commanding Officer** -The Commanding Officer shall be the Code Enforcement Manager or his/her designee.

The Commanding Officer Responsibility:

1. Supervise and maintain control over all activities of the search teams.

B. **Command Post** -A Command Post shall be established onsite (or at an offsite location). The location of the post will be revealed during the pre-inspection briefing.

Command Post staff shall include:

- 1 One primary radio operator
- 2 One support aide (if available)
- 3 The Commanding Officer

The Command Post shall be responsible for:

- 1 Initiating all orders, decisions and directions regarding the inspection operation.
- 2 Coordinating of communication equipment, team designations and all reports and

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documentation.

- 3 Maintaining a record/communications log sheet to include the following:
 - a) All important communication relevant to the operation.
 - b) Team assignments
 - c) Start and end times

C. **Search Teams** - employees of the city or other designated representatives as needed.

D. **Team Leader or Team Captain** - Code compliance officer overseeing the inspection of the facility

Team Captain Responsibility:

1. Maintain a roster of team members
2. Supervise and maintain control over all activities of the inspection teams
3. Mark and record any special findings by team members during inspection
4. Complete as directed all reports or other information requested by the Commanding Officer.

III. Guidelines

A. Each search team shall be comprised of a minimum of

- (1) Code Compliance Officer (team leader),
- (1) Police Officer,
- (1) Building Inspector,
- (1) Development Inspector and
- (1) Fire Inspector (substitutions will be permitted if designated representatives are not present).

B. Each search team will be given a team designation represented by a different color, and all team members will wear their respective color during the search (i.e. Blue team, Red team etc.)

C. Additional personnel may include Animal Control, EMS and Department of Health. These units will have designations based on their function (i.e. Animal control 1, or Dept. of Health 3 etc.).

D. Any other participants, including but not limited to media, council members, City administrators etc. will be designated as the **Alpha** team. Each Alpha team must be accompanied by (1) Police Officer and have a designated Team captain.

E. Code Compliance Sweeps and Inspections shall be conducted the second Wednesday of each month from 08:00 hrs to 12:00 hrs, unless directed otherwise.

F. Pre-Inspection briefings shall be held at 07:30 hrs, the day of the scheduled inspection at The

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City of Brookhaven Community Development Office, unless directed otherwise. All participants are required to be present for the pre-inspection briefing.

IV. PROCEDURES

- A. Coordination of the Inspection will begin two (2) weeks prior to the scheduled Inspection date.
- B. A property will be identified by the Community Development Department, and the Code Compliance Manager will begin notifying each participating Department.
- C. Site maps, aerial photographs and other logistical information will be obtained by the Code Compliance Manager and duplicated for distribution on the day of the Inspection. Code Compliance staff will conduct a preliminary inspection prior to the Inspection date.
- D. Confirmation (including staffing levels) with all participating agencies will be completed before the close of business on the day prior to the Inspection.
- E. Prior to the close of business on the day before the scheduled inspection, the Commanding Officer will ensure that all equipment is operable and that all documents are prepared.
- F. On the scheduled day of the Inspection, a pre-inspection briefing will commence in accordance with Section III F.
- G. Upon arrival at the assigned meeting location, all participating personnel will sign-in. Command Post staff will assign teams and designations, distribute equipment, and cover basic operation procedures. The command post location will be established.
- H. At approximately 08:00 hrs, all participants will travel to the site. Upon arrival, all teams will await further direction by Command Post staff.
- I. Command Post staff will assign each team with a location to begin the search.
- J. Upon completion of the search of the assigned location, Team Captains will inform the Command Post that the search is complete. The team will remain at that location and await direction from Command Post. In the event that a team member becomes separated from their team, it is the team Captain's responsibility to inform the Command Post.
- K. Search teams will commence with onsite inspections and record all findings as directed by Command Post staff.
- L. Command Post staff will notify all Team Captains when the search is over. All team members will reconvene at the Command Post, return all equipment, and sign out.

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M. Team Captains will be responsible for all assigned team equipment and preliminary reports.

V. REPORTING

- A. The Code Enforcement manager shall be responsible for compiling all of the preliminary inspection report findings into a single report regarding the subject property.
- B. The report shall have;
 - a. Photographic evidence of the findings
 - b. Commentary regarding the found violations
 - c. Code sections of the violations noted
 - d. Time period for compliance

VI. SPECIAL INSTRUCTIONS

- A. This policy is meant to augment property searches and attempt to establish practices and procedures.
- B. The Commanding Officer is responsible for ensuring that the provisions of this policy are complied with.

This policy is set forth as a guideline on the sweep procedure. Particular issues may constitute on site revisions as directed by the Code Compliance Manager and may or may not completely follow this guide.

MEMORANDUM

AGENDA # ID

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MEETING OF 3/12/13 Mayor & City Council

DISTRICT/COMMITTEE: City Wide

ISSUE/AGENDA ITEM TITLE: **Apartment Sweeps Program**

BACKGROUND/SUMMARY: The Multi-Family Residential Code Compliance Program, also known as the Apartment Sweeps Program, has been written to establish guidelines and procedures governing the mobilization of various Community Development Department personnel for the purpose of conducting unscheduled multi-family code compliance and inspections of multi-unit residences and commercial structures in the City of Brookhaven.

The program involves both exterior and interior inspections, which are further described in the attached documents. These inspections are deemed necessary to safeguard the health, safety and welfare of the citizens.

FISCAL IMPACT: Staffing for this program would be based upon how quickly the City would like to proactively implement the policy. Since the City's inception, our current Code Enforcement staff have been busy addressing complaint based (reactionary) cases. Over time and through education, the reactionary cases should subside some. These same existing staff members would proactively address the Apartment Sweeps Program, as they are able to. Additional staff may be added, if necessary, although none are recommended at this time. As such, no financial impact is anticipated at this time.

STAFF RECOMMENDATION: Staff recommends approval of the attached Ordinance, Property Maintenance and Housing Standards, Chapter 18 – Nuisances, with an effective date of April 16, 2013.

ATTACHMENTS:

1. Property Maintenance and Housing Standards, Chapter 18 – Nuisances
2. Apartment Sweeps Program Summary
3. Code Compliance Sweeps and Inspections Policies

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**STATE OF GEORGIA
CITY OF BROOKHAVEN**

ORDINANCE 2013-02-01

AN ONE READ ORDINANCE TO ADOPT AND APPROVE CHAPTER 18: NUISANCES AND PROVIDING FOR INCLUSION AND IDENTIFICATION IN THE CODE OF ORDINANCES FOR THE CITY OF BROOKHAVEN, GA; TO BE REFERENCED IN THE FUTURE AS CHAPTER 18: NUISANCES

- WHEREAS:** The governing authority of the City of Brookhaven finds that nuisances are such activities and conditions that cause a demonstrable adverse impact on the community.
- WHEREAS:** These activities and conditions may be associated with illegal criminal activity that has also been proven to have a demonstrable adverse impact on community residences ad results in neighborhood blight.
- WHEREAS:** The city finds that there is a substantial need directly related to the public health, safety and general welfare of its citizens to comprehensively address these concerns through the adoption of the Chapter 18: Nuisances.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BROOKHAVEN HEREBY ORDAINS:

That Chapter 18 – Nuisances be added to the Code of Ordinances for the City of Brookhaven and hereby adopted and approved; and is attached hereto as if fully set forth herein;

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, 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.

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

SO ORDAINED AND EFFECTIVE APRIL 16, 2013, this 12th day of February, 2013.

Approved by:

J Max Davis, Mayor

Attest: _____
Susan Hiott, City Clerk

Seal

Approved as to Form:

William F. Riley, Acting City Attorney

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Apartment Sweeps program summary

Considerations of the local apartment programs are being considered for Brookhaven.

We have implemented this program in other jurisdictions and have found it to be a wonderful success in cleaning up and enforcing the state minimum property maintenance code. The process is split in two programs

First program is the Code compliance department sweeps program; this program involves several steps:

1. Adopt a city policy to implement how and why the program is being adopted
Inspection
2. Organize the code compliance division, the police department and the fire marshal's office to inspect a certain property.
Propose the second Wednesday of the month
3. The inspection consists of a minimum of 2 teams and a central command center (total number of team members ideally is 8 to 12)
 - a. Team members consist of code official, building inspector, fire marshal and police officer
Our code compliance officer is actually certified in building inspection
4. The teams inspect the property in segments and report back to the command center taking pictures and notes of all code violations, ordinance violations and legal issues.
5. The command center records the activities of the teams and logs the time and area covered
Report
6. Upon returning to the office a report is generated with the photos, applicable code sections and all notes.
The reports typically consist of a 3 ring binder
 - a. Two copies of the report are printed, bound and one distributed to the property management the other filed for departmental use and record with an applicable time frame allotted for completion and re-inspection.
 - b. A digital version is also sent to the owner of the property with an applicable time frame allotted for completion and re-inspection.
7. Meet with management in regards to findings, and work toward setting up a schedule for completion of the project.
Re-Inspection
8. Re-inspect completed portions of the property typically consisting of two or three trips to re-walk the entire site and several trips to verify items throughout as they are completed.

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Second program is the interior maintenance inspections of the apartments; this program also involves several steps:

1. Adopt an ordinance to implement how and why the program is being adopted
This program is designed to be performed as a "third party" inspection.
2. Evaluate third party inspection companies for adequacy to perform inspections
3. Request every complex to comply in set number of days/weeks or months
Compliance by the date of business license renewal seems to be the most effective
4. The apartment complex contacts a pre-approved third party apartment inspector and has all of the apartments inspected throughout their complex.
 - (1) Those reports are submitted to the apartment complex and our office for recording and documentation purposes.
 - (2) Any violations must be permitted and inspected by our department as applicable.
 - (3) Third party inspection company performs re-inspections on all failed units for compliance.
5. The complex then divides the number of their apartments into thirds and has one third of the units inspected annually. Essentially ending up with all of the apartments being inspected every 3 years.

All of the reports from the third parties must be recorded for each apartment complex and have all unit numbers listed and noted when inspected. It seems complexes have had the tendency to re-inspect the same 1/3 of the units every year.

PROPERTY MAINTENANCE AND HOUSING STANDARDS

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Chapter 18 - NUISANCES

ARTICLE I. - IN GENERAL

Sec. 18-1. - Purpose and findings.

The governing authority of the City of Brookhaven finds that nuisances are such activities and conditions that cause a demonstrable adverse impact on the community. These activities and conditions may be associated with illegal criminal activity that has also been proven to have a demonstrable adverse impact on community residences and results in neighborhood blight. The city finds that there is a substantial need directly related to the public health, safety and general welfare of its citizens to comprehensively address these concerns through the adoption of the following regulations. The purpose and intent of the governing authority of the City of Brookhaven in enacting this chapter are as follows:

- (1) To state that it is the duty of the owner of every dwelling, building, structure, or property within the jurisdiction to construct and maintain such dwelling, building, structure, or property in conformance with applicable codes in force within the jurisdiction, or such ordinances which regulate and prohibit activities on property and which declare it to be a public nuisance to construct or maintain any dwelling, building, structure, or property in violation of such codes or ordinance;
- (2) To preserve the value of property and prevent neighborhood blight that arises from poorly maintained property;
- (3) To maintain and promote an attractive residential area and commercial area by requiring that dilapidated property be repaired or removed;
- (4) To maintain for the city's residents, workers and visitors an aesthetically attractive environment and to advance the aesthetic interest of the city;
- (5) To protect the health, welfare and safety of the citizens of City of Brookhaven by the removal of both criminal perpetrators and the housing blight on the community;
- (6) To require owners of real property to keep their property in compliance with building, safety and fire codes to minimize the occurrence of illegal criminal activity therein;
- (7) To promote the safety of its citizens, to preserve property values, to provide for the convenience and enjoyment of public areas, to attract tourists, settlers and industry, to serve the public health, safety and aesthetics, to advance the general prosperity of the community and to serve the general welfare; and
- (8) To provide for the enforcement of the provisions of this chapter.

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Sec. 18-2. - Definitions.

[For the purposes of this chapter, the following words, terms and phrases shall have the meanings set out in this section, unless the context indicates otherwise:]

Building official shall mean the officer or other person designated by the Director with the authority charged with the administration and enforcement of this code or his designee.

City shall mean the City of Brookhaven, Georgia.

Closing means securing and causing a dwelling, building or structure to be vacated.

Drug crime means an act which is a violation of O.C.G.A. Tit. 16, Ch. 13, art. 2, known as the "Georgia Controlled Substances Act," as may hereinafter be amended.

Dwelling, building, or structure means any building or structure or part thereof used and occupied for human habitation or commercial, industrial or business uses, or intended to be so used, and includes any outhouses, appurtenances belonging thereto or usually enjoyed therewith and also includes any portion of the public way that abuts the parcel of property when it is used in conjunction with the abutting property for the commission of nuisance activity described in section 18-3 of this chapter. The term "dwelling, building, or structure" shall not mean or include any farm, and building or structure located on a farm, or any agricultural facility or other building or structure used for the production, growing, raising, harvesting, storage or processing of crops, livestock, poultry, or other farm products.

Interest holder. See *Party-in-interest*, below.

Owner means the holder of the title in fee simple and every mortgagee of record including any person who, alone or jointly or severally with others:

- (1) Has legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
- (2) Has charge, care or control of any dwelling or dwelling unit, as owner or agent of the owner, prime tenant, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner.

Any such person thus representing the actual owner shall be bound to comply with the provisions of this chapter to the same extent as the owner.

Party-in-interest or interest holder means an individual, association, entity or corporation, executor, administrator, guardian, or trustee that has a legal interest in or possession of a dwelling, building, or structure.

Public authority means any member of the City Council or their or his or her designee.

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Repair means closing a dwelling, building or structure or the cleaning or removal of debris, trash, and other materials present and accumulated which create a health or safety hazard in or about any dwelling, building or structure.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 18-3. - Drug and illegal gambling houses, houses of prostitution and other disorderly houses.

(a) Any dwelling, building, or structure used for prostitution, illegal gambling, or in connection with the commission of drug crimes is hereby declared to be a public nuisance. However, consistent with the public policy of the State of Georgia, this chapter shall not apply to any publicly owned cultural facility pursuant to O.C.G.A. § 41-1-8, as may hereinafter be amended.

(b) It is the affirmative duty of the owner of every dwelling, building, or structure within City of Brookhaven to construct and maintain such dwelling, building, or structure in conformance with applicable codes in the Official Code of Georgia, and all ordinances in force within the City of Brookhaven.

(c) An owner or party-in-interest of a dwelling, building or structure shall not be subject to proceedings described in subsections (e)(1), (e)(2), (f), (h), (i) or (j) of this section if it is established that the owner or party-in-interest:

(1) Did not know and could not reasonably have known of the public nuisance described in subsection (a), above, occurring on the subject premises; and

(2) Does not hold the subject property for the benefit of or as nominee for any person whose conduct gave rise to the public nuisance described in subsection (a) above, and, if the owner or party-in-interest acquired the interest through any such person, the owner or party-in-interest acquired it as a bona fide purchaser for value without knowingly taking part in the public nuisance; or

(3) Acquired ownership or legal interest after the completion of the public nuisance giving rise to proceedings under this chapter or at the time the title was acquired, was reasonably without cause to believe that the dwelling, building or structure was subject to be deemed a public nuisance or likely to become subject to being deemed a public nuisance under this chapter.

(d) The Building Official shall have all powers to carry out and effectuate the purpose of this chapter as set forth in O.C.G.A. § 41-2-11, as may hereinafter be amended.

(e) The Building Official shall make an investigation or inspection of a dwelling, building, or structure whenever a charge is made that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of activities described in subsection (a) above; or constitutes an endangerment to the public health or

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safety as a result of unsanitary or unsafe conditions. If the Building Official's investigation or inspection identifies that any dwelling, building, or structure is unfit for human habitation or for commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of activities described in subsection (a) above; or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the Building Official may either:

- (1) Issue a citation for violation of any applicable state minimum standard codes, building, fire, life safety, and other codes adopted by ordinance, and conditions creating a public health hazard or general nuisance. The citation shall notify the owner and parties of the violation and a time frame for compliance; and
- (2) Issue a complaint in rem against the lot, tract, or parcel of real property on which such dwelling, building, or structure is situated or where such public health hazard or general nuisance exists and shall cause summons and a copy of the complaint to be served on the owner and parties in interest in such dwelling, building, or structure. Service of the complaint shall be in the manner as mandated by O.C.G.A. § 41-2-12, as may hereinafter be amended. The complaint shall identify the subject real property by appropriate street address and official tax map reference; identify the owner and parties in interest; state with particularity the factual basis for the action; and contain a statement of the action sought by the Building Official to abate the alleged nuisance. The summons shall notify the owner and parties in interest that a hearing will be held before a court of competent jurisdiction at a date and time certain and at a place within the city where the dwelling, building or structure is located. Such hearing shall be held not less than fifteen (15) days nor more than forty-five (45) days after the filing of said complaint in the proper court. The owner and parties in interest shall have the right to file an answer to the complaint and to appear in person or by attorney and offer testimony at the time and place fixed for hearing.

(f) After notice and a hearing conducted pursuant to subsection (e)(2) above, if a court of competent jurisdiction determines that the dwelling, building, or structure in question is unfit for human habitation or is unfit for its current commercial, industrial, or business use and not in compliance with applicable codes; is vacant and being used in connection with the commission of activities described in subsection (a); or constitutes an endangerment to the public health or safety as a result of unsanitary or unsafe conditions, the court shall state in writing findings of fact in support of such determination and shall issue and cause to be served upon the owner and any parties in interest that have answered the complaint or appeared at the hearing an order of abatement:

- (1) If the repair, alteration, or improvement of the said dwelling, building, or structure can be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, the order of abatement shall require the owner, within the time specified in the order, to repair, alter, or improve such dwelling, building, or structure so as to bring it into full compliance with the applicable codes relevant to the cited violation and, if applicable, shall require the taking of reasonable measures designed

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to prevent the recurrence of the nuisance activity described in subsection (a) in light of the magnitude of the harm caused by the nuisance. Those measures may include, but are not limited to, making improvements to real estate and installing lighting to enhance security, the hiring of licensed and insured security personnel, the hiring of a receiver, the initiation and execution of eviction proceedings against tenants engaged in illegal activity; or

(2) If the repair, alteration, or improvement of the said dwelling, building, or structure in order to bring it into full compliance with applicable codes relevant to the cited violations cannot be made at a reasonable cost in relation to the present value of the dwelling, building, or structure, requiring the owner, within the time specified in the order, to demolish and remove such dwelling, building, or structure and all debris from the property.

(3) The court shall make its determination of "reasonable cost in relation to the present value of the dwelling, building, or structure" without consideration of the value of the land on which the structure is situated; provided, however, that costs of the preparation necessary to repair, alter, or improve a structure may be considered. Income and financial status of the owner shall not be a factor in the court's determination. The present value of the structure and the costs of repair, alteration, or improvement may be established by county tax records, affidavits of real estate appraisers with a Georgia appraiser classification as provided by Georgia law, qualified building contractors, or qualified building inspectors without actual testimony presented. Costs of repair, alteration, or improvement of the structure shall be the cost necessary to bring the structure into compliance with the applicable codes relevant to the cited violations in force in the county.

(g) The court may authorize the issuance of ex parte administrative search warrants reasonably calculated to determine whether the nuisance has been abated or whether the order of the court has been obeyed.

(h) If the owner fails to comply with an order to repair or demolish the dwelling, building, or structure,

- The Building Official may cause such dwelling, building, or structure to be repaired, altered, or improved or to be vacated and closed or demolished. The public officer shall cause to be posted on the main entrance of the building, dwelling, or structure a placard with the following words:

"This building is unfit for human habitation or commercial, industrial, or business use and does not comply with the applicable codes or has been ordered secured to prevent its use in connection with illegal activities or constitutes an endangerment to public health or safety as a result of unsanitary or unsafe conditions. The use or occupation of this building is prohibited and unlawful."

- After a hearing, if it is deemed by the court that this section has not been complied with, such owner or other person is given five days from written

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notice, to comply and if he fails or refuses to do so, the Building Official shall thereupon cause the work to be done.

(i) If the Building Official has the structure demolished, reasonable effort shall be made to salvage reusable materials for credit against the cost of demolition. The proceeds of any moneys received from the sale of salvaged materials shall be used or applied against the cost of the demolition and removal of the structure, and proper records shall be kept showing application of sales proceeds. Any such sale of salvaged materials may be made without the necessity of public advertisement and bid.

(1) The City of Brookhaven, the Building Official and the city council are relieved of any and all liability resulting from or occasioned by the sale of any such salvaged materials, including, without limitation, defects in such salvaged materials; and

(2) The amount of the cost of demolition, including all court costs, appraisal fees, administrative costs incurred by the tax commissioner, and all other costs necessarily associated with the abatement action, including restoration to grade of the real property after demolition, shall be a lien against the real property upon which such cost was incurred.

(j) The lien provided for in subsection (i)(2), above, shall attach to the real property upon the filing of a certified copy of the order requiring repair, closure, or demolition in the office of the clerk of superior court in the county where the real property is located and shall relate back to the date of the filing of the lis pendens notice required under O.C.G.A. § 41-2-12(g), as amended. The clerk of superior court shall record and index such certified copy of the order in the deed records of the county and enter the lien on the general execution docket. The lien shall be superior to all other liens on the property, except liens for taxes to which the lien shall be inferior, and shall continue in force until paid. After filing a certified copy of the order with the clerk of superior court, the public officer shall forward a copy of the order and a final statement of costs to the county tax commissioner. It shall be the duty of the county tax commissioner to collect the amount of the lien in conjunction with the collection of ad valorem taxes on the property and to collect the amount of the lien as if it were a real property ad valorem tax, using all methods available for collecting real property ad valorem taxes, including specifically O.C.G.A. Tit. 48, Ch. 4 ; provided, however, that the limitation of O.C.G.A. § 48-4-78 which requires twelve (12) months of delinquency before commencing a tax foreclosure shall not apply. The tax commissioner shall remit the amount collected to the city. Thirty (30) days after imposition of the lien, the unpaid lien amount shall bear interest and penalties in the same amount as applicable to interest and penalties on unpaid real property ad valorem taxes.

(k) The City Council may waive and release any lien imposed on property pursuant to subsection (i)(2) of this section if the owner of such property enters into a contract with the City of Brookhaven agreeing to a timetable for rehabilitation of the real property or the dwelling, building, or structure on the property; demonstrates the financial means to accomplish such rehabilitation; fully completes the rehabilitation; and fulfills all terms of the contract.

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(l) The City Council may appropriate revenue as necessary and may accept and apply grants or donations in carrying out the provisions of this chapter.

(m) Where the abatement action does not commence in the Superior Court of DeKalb County, review of a court order requiring the repair, alteration, improvement, or demolition of a dwelling, building, or structure shall be by direct appeal to the Superior Court of DeKalb County under O.C.G.A. § 5-3-29, as may hereinafter be amended. Notice of an appeal shall act as a supersedeas.

Sec. 18-4. - Reserved.

ARTICLE III. - PROPERTY MAINTENANCE

CODE ADOPTION

Section 18-5 - Adopted codes.

(a) *Generally.* As future new editions and/or amendments of the code listed below are adopted by the Board of Community Affairs of the Georgia Department of Community Affairs, it shall become a part of or replacement for the adopted code, rules and regulations or standards and shall become enforceable as prescribed without separate adoption by the City. All new construction, installations, repairs or alterations shall be in conformance with the current edition of the following codes and referenced appendixes with Georgia amendments as currently adopted by the Board of Community Affairs of the Georgia Department of Community Affairs:

(1) International Property Maintenance Code.

(b) Referenced standards. Standards referenced in the above-stated codes shall be considered an integral part of the code without separate adoption. If specific portions of a standard are denoted by a code test, only those portions of the standard shall be enforced. Where code provisions conflict with a standard, the code provisions shall govern. Permissive and advisory provisions in a standard shall not be construed as mandatory.

(c) Appendices. The appendices included in any code adopted pursuant to Article I of this chapter are not intended for enforcement unless specifically referenced in this chapter or specifically included in this Code.

(d) Referenced codes and standards. The adopted state codes adopted pursuant to this chapter shall be considered part of the requirements of this chapter to the prescribed extent of each such adoption. Where differences occur between the provisions of this chapter and referenced codes and standards, the provisions of this chapter shall govern.

Section 18-6 International Property Maintenance Code

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That a certain document, being marked and designated as the International Property Maintenance Code, as published by the International Code Council, be and is hereby adopted as the Property Maintenance Code of the City of Brookhaven in the State of Georgia for regulating and governing the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use; and the condemnation of buildings and structures unfit for human occupancy and use, and the demolition of such existing structures as herein provided; providing for the issuance of permits and collection of fees therefor; and each and all of the regulations, provisions, penalties, conditions and terms of said Property Maintenance Code on file in the office of the City of Brookhaven are hereby referred to, adopted, and made a part hereof, as if fully set out in this ordinance, with the additions, insertions, deletions and changes, if any, prescribed in Section 18-7 of this ordinance.

Section 18-7. Revisions to the International Property Maintenance Code:

Section 101.1. Insert: City of Brookhaven

Section 103.5. Insert: As adopted by the City Council

Section 302.4. Insert: 12 inches

Section 304.14. Insert: April 1st to October 1st

Section 602.3. Insert: October 15th to March 15th

Section 602.4. Insert: October 15th to March 15th

Section 18-8. That if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City of Brookhaven hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 18-9. That nothing in this ordinance or in the Property Maintenance Code hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 18-4 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 18-10. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect April 16, 2013 from and after the date of its final passage and adoption.

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Section 18-11 through 18-30 Reserved

ARTICLE IV. - FORECLOSURE REGISTRY - Reserved

Section 18-31 through 18-50 Reserved

Article V

MULTIFAMILY RENTAL HOUSING

Section 18-51 The Ordinance Chapter 15 Article XIII titled Multi Family Rental Housing is hereby repealed and replaced by Article V contained herein.

Section 18-52. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Certified building inspector means any person inspecting for compliance with the various adopted codes who is a licensed design professional (architect or engineer) or holds one of the following certifications from The International Code Council (ICC): property maintenance and housing inspector, housing rehabilitation inspector, building inspector, building plan examiner or commercial combination inspector.

Code of compliance certificate means a certificate, substantially similar to exhibit A attached to the ordinance from which this article is derived and incorporated herein, executed by a certified building inspector and stating compliance with those minimum standards described in the inspection report attached thereto.

Inspection report means the report attached to the code compliance certificate describing minimum requirements for inspection of each unit.

Lease means any written or oral agreement which sets forth any and all conditions concerning the use and occupancy of multifamily rental dwellings or multifamily rental units.

Multifamily rental dwelling means any multifamily structure, multifamily building, or other facility promised and/or leased to a residential tenant or tenants for use as a home, residence, or

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sleeping unit. This definition includes, but is not limited to, multiple-family dwellings, multiple-family apartment units, boardinghouses, rooming houses, group homes, and flats.

Multifamily rental unit means any one area, room, structure, flat, apartment, or facility of a multifamily rental dwelling that is being leased or rented to only one tenant, group of tenants, or family under one lease, or under terms of joint and severable liability.

Occupancy means all tenants, lessees and persons residing within a multifamily rental dwelling or multifamily rental unit.

Owner means any person, agent, firm, or corporation having a legal or equitable interest in a premises.

Owner-occupied means any part of a structure used as living quarters by the owner of said structure where other parts of the structure are used as multifamily rental units. Example: Two-family dwelling, owner occupies one flat; rooming house, owner occupies one unit.

Premises mean any lot or piece of land inclusive of the multifamily rental dwelling or multifamily rental unit.

Section 18-53. Fee and certificate required.

(a) *Occupation tax.* All owners of multifamily rental dwellings or multifamily rental units within the city that receive income for use of four or more such dwellings or units and meet the requirements of O.C.G.A. § 48-13-5 for having a location or office within the city (i) shall be subject to an occupation tax as provided in this division and (ii) shall provide to the city, prior to April 15, 2013, a code compliance certificate covering 100 percent of the multifamily rental units within the 12-month period immediately preceding the date of the certification. Said code compliance certificate shall be certified by the owner that all units inspected are in compliance with those standards contained in the code compliance certificate and inspection report. For the initial year of construction, this section shall not apply to new construction or rehabilitation of a multifamily rental dwelling provided proper permits are obtained from the city.

Certificates presented on or before April 15th 2013 can utilize the previously approved DeKalb county certificate - exhibit B
Certificates presented after April 15th 2013 must use and be compliant with the city's Code of compliance certificate - exhibit A

(b) *Inspection.* Upon initial inspection of such dwellings or units, should a certified building inspector determine that further work is necessary to comply with the minimum standards set forth herein, an acceptable plan shall be submitted to the Building Official for the City of Brookhaven, outlining the time and scope of work necessary to bring the units into compliance. If such plan is accepted by the Building Official as reasonable and justified, an extension may be granted for up to one year for completion of repairs and compliance with this division. No

extension shall be granted if life safety issues are involved and any such units shall not be leased until brought into compliance.

(c) *Compliance certificate.* After submission of the initial code compliance certificate, each owner shall submit a code compliance certificate annually, commencing on January 1, 2014, with their business license renewal. Such subsequent code compliance certificate shall cover at least 20 percent of the units, provided all units shall be inspected, at a minimum, every five years. All units inspected shall be listed individually on the code compliance certificate submitted to the city by the certified building inspector.

(d) *Written record of inspection.* Furthermore, each owner and certified building inspector shall keep a written record of all inspections for each unit including the date of the inspection, items inspected and all violations, if any, observed. Such records shall be presented to the city within ten business days after such request is made in writing to the inspector. Failure to provide such records shall nullify the code compliance certificate for those units.

Section 18-54. Failure to provide code compliance certificate.

(a) Failure to provide the code compliance certificate as provided herein shall be a violation of this division and is subject to those penalties contained herein and in section 1-10.

(b) Further, said failure, upon a judicial determination, shall be a condition constituting probable cause, and may subject said multifamily rental dwelling or multifamily rental units to inspection by the city building official at a fee as determined by the city council that covers all costs of such inspection by the city. Said inspection by the city, if required, shall be at a sole cost of the owner and failure to pay said cost shall result in a lien being placed on the premises as provided for collection of taxes.

(c) Failure to pay the occupational tax as provided herein shall be a violation of this division and is subject to those penalties set forth in this division. Nothing contained in this section shall prevent the city from enforcement of the state minimum standard codes as provided in this chapter.

Section 18-55. Penalty for false certification and false inspection.

(a) An owner who knowingly participates in furnishing a code compliance certificate to the city which contains a false certification that all multifamily rental dwellings or multifamily rental units inspected are in compliance with those standards contained in the code compliance certificate shall be guilty of a violation of this Code for each multifamily rental dwelling or multifamily rental unit for which the certification is shown to be false and can be fined up to \$1,000.00, or imprisoned for up to one year, or any combination of these, by the court for each violation.

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(b) A certified building inspector who furnishes an inspection report which knowingly contains fraudulent information that a multifamily rental dwelling or multifamily rental unit meets the minimum housing standards of the city as shown by the inspection report contained in exhibit A of the ordinance from which this division is derived shall be guilty of a violation of this Code and can be fined up to \$1,000.00, or imprisoned for up to one year, or any combination of these, by the court for each violation. In addition, the building inspector's right to submit inspection reports to the city may be suspended for a stated period of time, up to five years, by resolution of the city council.

Section 18-56. Exterior and publicly accessible evaluations of multi-family properties.

Exterior evaluations will be conducted evaluating for compliance of the; adopted International Property Maintenance Code, the Life Safety Code (existing provisions) and the International Fire Code and referenced standards or standards.

- (1) All multi-family properties will be subject to an exterior evaluation of the exterior, public and mechanical areas per the city policy including but not limited to;
 - a. The exterior grounds, walkways, access areas of the community.
 - b. All publicly accessible buildings (accessible to more than one family or individual) such as pool houses, clubhouses, office areas, maintenance shops, basements and crawl spaces etc.
- (2) After the property is presented with the findings of the inspection and the report. Compliance must be achieved in a timeframe set forth by the city policy.

Section 18-57 Noncompliance of city report findings

Failure to properly address report findings in the timeframe outlined as presented shall be a violation of this division and is subject to those penalties; provided by; the Property Maintenance Code, allowed by law, contained herein or Section 18-3.

INSPECTION REPORT

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Inspector: ARTICLE A Registration #: _____ Cert. Held: _____

Name of Community: _____ Apartment No. _____ Date of Insp: 20

	<u>Minimum Standards for Basic Equipment & Facilities for Dwellings</u>	<u>PASS</u>	<u>FAIL</u>	<u>Action Required for Compliance</u>
1.	Flooring is impervious in kitchen and bath areas			
2.	Privacy for bathrooms			
3.	Hot and cold water supply			
4.	Heating facilities in good working order, no unvented heating appliances in sleeping rooms			
5.	Garbage disposal facilities (trash cans or sink grinder for food stuff disposal)			
6.	Smoke detector devices as required by law			
7.	Windows, 8% glazing of floor space for light and ventilation, 45% shall be operable with screens if no air conditioning. Windows shall be in good repair and rodent proof, no open cracks or holes			
8.	Plumbing facilities including kitchen sink, lavatory, tub or shower, and water closet, are clean and sanitary and are in good working order			
9.	Electrical in good working order with proper covers, no exposed wiring, existing light fixtures in good working order			
10.	Both interior and exterior doors, jambs and hardware in good working order			
11.	Stairs in good working order with protective railings (interior and exterior)			
12.	Interior floors, walls and ceiling kept in good repair with applicable railings			
13.	Proper number of residents per bedroom as allowed			
14.	Extermination as needed			
15.	Exit requirements, unobstructed means of egress leading to safe and open space			
16.	Care of premises; generally maintained with no excessive trash, rubbish or similar items			
17.	Fire Extinguisher present and tag or inspection			
18.	Apartment numbers posted and in plain view			
19.	Balconies, patios and other exterior components			
20.	Sprinkler heads clear of paint and obstructions			
21.	Certified Inspector Signature and date			



DeKalb County Planning & Development Department

Burrell Ellis
Chief Executive Officer

Article B

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City of Brookhaven 100% Year 1: CONDITION INSPECTION REPORT

Name of the Apartment Community: _____

Address: _____

Occupied? Yes ___ No ___ Date Unit Reoccupied (If "No") _____ Inspection Date: _____

Certified Building Inspectors Name (Print): _____ Unit #: _____

No	Minimum Standards for Basic Equipment & Facilities for Dwellings	PASS	FAIL	Action Required for Compliance
1	Address number for the unit(s) is posted in plain view.			
2	Interior and exterior doors are not ill-fitting, frames and hardware are in good condition and operate properly; privacy locks are provided for bathroom(s). (Provide "failed" location(s) if applicable)			
3	Interior floors, walls and ceiling kept in good repair.			
4	Windows, 8% glazing of floor space for light and ventilation, 45% shall be operable with screens if no air conditioning. Windows shall be in good repair and rodent proof, no open cracks or holes.			
5	Floors, stairs, landings, balconies, decks and porches are maintained in sound condition and good repair; interior and exterior railings and handrails are properly secured and in good repair.			
6	Bathroom(s) have operable bath fan in good condition or window.			
7	Plumbing facilities including kitchen sink, lavatory, tub or shower, and water closet(s), are clean and sanitary and are in good working order.			
8	Water heating equipment is operational, in good repair and hot water is supplied to bathroom fixtures and the kitchen sink.			
9	Existing smoke detector devices are operational (test buttons checked), located in the vicinity of all sleeping rooms.			
10	Electrical in good working order with proper covers, no exposed wiring, existing light fixtures in good working order.			
11	Heating facilities are operational and in good working order. No gas burning appliances are located in bedrooms.			
12	Evidence of roaches, insects and rodents, were not observed in more than one unit and/or in shared, public or exterior areas: (Note: extermination is required prior to re-leasing a vacant unit).			
13	A safe, continuous and unobstructed path of travel shall be provided from any point in the unit or structure to the public way. Means of egress shall comply with the International Fire Code.			
14	Updated fire extinguishers are located in the common hallways within 75' of the entrance doors to all units on the same floor.			
15	Premises are being maintained with no excessive trash, rubbish or similar items in trash collection or dumpster areas.			

Certified Building Inspector Signature: _____ Tele. No. _____

MEMORANDUM

AGENDA # ID _____

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MEETING OF February 12, 2013

DISTRICT/COMMITTEE: _____

ISSUE/AGENDA ITEM TITLE:

Amend Article II of Chapter 15 of the City's Code of Ordinances

BACKGROUND/SUMMARY:

The proposed amendment seeks to accomplish a few goals.

1. It clarifies the City's law to reflect the constitutionality as it relates to taxation of lawyers.
2. It exempts taxation for "businesses" making under \$12,000 per year as to exclude hobbies and incidental sales (e.g. knitting sweaters for friends or baking).
3. It establishes an interest rate for late payments of 12% per year (state maximum is 18%)
4. It restates the economic development incentives from DeKalb's language reflecting DeKalb's adopted policy to legal language that references a potential policy that may be adopted by Brookhaven at a later date.
5. It organizes language within the definitions and appeal process for staff and businesses.
6. It replaces language referencing the Standard Industrial Classification Manual (replaced over 15 years ago) with the North American Industrial Classification System (the successor.)
7. It eliminates the annual "true-up" process making the current year bill based on the prior year actual gross receipts. This eliminates a mailing process for both businesses and City.

FISCAL IMPACT: (Budgeted – over or under)

The interest rate in the current ordinance is silent. This amendment clarifies the interest rate at 12% whereas it could be otherwise interpreted to be at 18%. The rate selected is at Council's discretion. The 12% rate is being recommended because it should adequately discourage non-compliance. No other fiscal impact is anticipated. Also, this amendment does not affect rates charged to businesses. As updated by the City Manager earlier in February, staff has looked at occupation taxes and alcohol taxes. In looking over the rates, they are equal to or less than Dunwoody and the other "new" cities. They are less than Fulton. As stated in that update, my recommendation would be to suggest no further action is needed on the rates.

STAFF RECOMMENDATION:

Staff recommends adoption of the suggested edits to Article II of Chapter 15.

ATTACHMENTS:

Ordinance to amend Chapter 15
Red-lined amended language to Chapter 15

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AN ONE READ ORDINANCE PROVIDING FOR THE AMENDMENT OF THE CODE OF ORDINANCES OF THE CITY OF BROOKHAVEN, GEORGIA, OF CHAPTER 15 LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS BY AMENDING ARTICLE II BUSINESS OCCUPATION TAXES BE AMENDED AS FOLLOWS:

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BROOKHAVEN HEREBY ORDAINS:

That Article III Business Occupation Taxes of Chapter 15 Licenses, Permits, and Miscellaneous Business Regulations of the Code of Ordinances of the City of Brookhaven be removed in its entirety and amended to read as follows:

ARTICLE II. - BUSINESS OCCUPATION TAXES ¹⁵²¹

Sec. 15-26. - Generally.

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the city, or in the case of an out of state business with no location in Georgia exerting substantial efforts within the city pursuant to O.C.G.A section 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation taxes, as adopted from time to time by the City Council is on file in the office of the clerk, and shall be levied and collected in the amount and manner specified by this article.

Sec. 15-27. - Definitions of terms used in this article.

- (a) Wherever the term "city" is used in this article, it shall be construed to mean the incorporated areas within the municipal boundaries of the City of Brookhaven, Georgia.
- (b) Other terms used in this article:
 - (1) *Administrative fee* is a component of the occupational tax which approximates the cost of handling and processing the occupational tax.
 - (2) *Applicant or holder* means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.
 - (3) *Business* where used in this article shall be held to mean any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.
 - (4) *Director* means the director of finance or his or her designee.
 - (5) *Dominant line* means the type of business within a multiple line business from which the greatest amount of income is derived.
 - (6) *Employee* means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.

- (7) *Gross receipts* means total revenue of the business or practitioner for the period, including without being limited to the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered;
 - e. Proceeds from rent, interest, royalty, or dividend income; and
 - f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever,
 except that gross receipts shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(1), between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(2), or between or among wholly owned partnerships or other wholly owned entities;
 - d. Payments made to a subcontractor or independent agent;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a non profit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute eighty (80) percent or more of the organization's receipts; and
 - f. Proceeds from sales to customers outside the geographical boundaries of the State of Georgia.
- (8) *License* means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this chapter.
- (9) *Location or office* shall include any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.
- (10) *Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.
- (11) *Person* wherever used in this article shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.
- (12) *Practitioner of professions and occupants* means one who by state law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (13) *Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph 8 of O.C.G.A. section 36-71-2 or other costs or conditions of zoning or land development.

Sec. 15-28. - Registration of name of business; payment of taxes required

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the finance department and either paid the taxes as provided by this article or produced evidence of occupational tax payment to another jurisdiction in the State of Georgia or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in this state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.

- (b) At the time of business registration, such person shall also identify to the finance department the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all city code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a under the general penalties and shall be subject to the provisions of this Code.

Sec. 15-29. - Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer those businesses subject to the occupational tax shall on or before February 1 file with the finance department's business occupation tax section a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the finance department and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return. Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.
- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (d) The city shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. [section] 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to [chapter 40 of Title 43](#)
- (f) For out of state businesses with no location in Georgia, occupation taxes include the gross receipts of business as defined in [section 15-33](#) of this article titled paying occupation tax of business with no location in Georgia.
- (g) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

Sec. 15-30. - Administrative and regulatory fees.

- (a) Council may establish a non prorated, non refundable administrative fee required on all business occupation tax accounts for the initial start up, renewal or reopening of those accounts. Such fee, if established, shall be applicable to all accounts.
- (b) Council may establish a regulatory fee to be imposed on those applicable businesses listed under O.C.G.A. section 48-13-9(b) that the city deems necessary to regulate. Such fee, if established, shall be applicable to all accounts.

Sec. 15-31. - Separate registration for separate locations or separate tradenames

Where a person conducts business at more than one (1) fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose of the occupation tax and the gross receipts of each will be returned on a form furnished by the finance department in accordance with the provisions of this article.

Sec. 15-32. - Renewal returns and applications; due date; penalty for late payment.

- (a) Notwithstanding 1995 exception reporting date of gross receipts for implementation of this chapter, on or before February 1 of each subsequent year businesses liable for occupation taxes levied under this article for the year shall file with the finance department, on a form furnished by the finance department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within one hundred twenty (120) days after January 1 shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one (1) percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the City of Brookhaven, failure to register the name of the business and the line or lines of business that the business conducts will be subject to possible penalties or other violations of the city Code . Registration under this section is required for insuring business to be conducted complies with city codes or ordinances governing health, safety and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one (1) percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (f) In addition to the above remedies, the finance department may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

Sec. 15-33. - Paying occupation tax of business with no location in Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the City of Brookhaven, Georgia, and the business or practitioner:

- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the City of Brookhaven, Georgia, for the purpose of soliciting business or serving customers or clients; or

- (2) Owns personal or real property which generates income and which is located within the City of Brookhaven, Georgia.

Sec. 15-34. - Professionals classified in O.C.G.A. section 48-13-9(c), Paragraphs 1 through 18.

Practitioners of professions as described in O.C.G.A. section 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one (1) of the following:

- (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article; or
- (2) An established fee described in O.C.G.A. section 48-13-9(c)(1) through (18) . Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this paragraph shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner.
- (3) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

Sec. 15-35. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

Sec. 15-36. - Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to [Title 43](#) of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the city registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the city shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the city when so requested.

Sec. 15-37. - Change of location.

Any person moving from one (1) location to another shall notify the finance department of this move and the new address in writing on a form provided by the finance department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the city.

Sec. 15-38. - Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

Sec. 15-39. - Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of city registration, show evidence of such qualification.

Sec. 15-40. - Inspections of books and records; audits; confidential information.

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- (a) The finance department shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the finance department such books or records shall be submitted for inspection by a representative or agent of the city within thirty (30) days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest as provided by state law and penalties provided for by city code. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.
- (b) Except as provided in paragraph (c) of this section, information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under Article 4 of [Chapter 18](#) of Title 50.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the City Council of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

Sec. 15-41. - Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined by the North American Industrial Classification System (NAICS); and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The finance department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the City Council and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant business activity is legally exempt as defined by this article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.
- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the city to the business' profitability classification established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

Sec. 15-42. - Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets, are not the principal occupation of the individual, and gross less than \$12,000 in otherwise taxable receipts per year, to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

Sec. 15-43. - Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the city occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the finance department.
- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the finance department a federal tax exemption letter showing the code section

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under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.

- (c) Notwithstanding the exemption from payment of city occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

Sec. 15-44. - Exclusions from article; special classifications.

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupational tax payment is required from any satellite subscription television system. Satellite subscription television system means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross city right-of-way in the city. The provisions of this paragraph shall not apply to any person that is subject to the City of Brookhaven's Franchise Fee for the holders of a cable or video service provider state franchise.
- (c) Registration and occupational tax payment is required from any broadcast subscription television system. Broadcast subscription television system means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one (1) location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten (10) consecutive days may be registered individually, or the group or collection may be registered as a "special event." Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. section 48-13-10, the City Council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this paragraph shall not exceed ten (10) percent of the business' total annual gross receipts.

Sec. 15-45. - Denial, revocation or suspension of business occupation tax certificate.

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this article shall be denied, revoked or suspended, and considered void, upon one (1) or more of the following grounds:
 - (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
 - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
 - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;
 - (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
 - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a habitual violator under [Title 40, Chapter 5](#) of the Official Code of Georgia Annotated, or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;

- (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or *nolo contendere* to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of Title 36, [Chapter 60](#) of the Official Code of Georgia Annotated, or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of *nolo contendere* to any of the above offenses, said certificate shall be subject to suspension and/or revocation;
 - (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
 - (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
 - (11) Any other violation of this article.
- (b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the twelve (12) months immediately preceding the filing of any application under this chapter the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.
 - (c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five (5) calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

Sec. 15-45.1. - Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification, the aggrieved person or entity shall first submit in writing a complaint to the City Clerk which shall set forth in reasonable detail the matters complained of. The complaint may take letter form, and it shall be the duty of the city to review the complaint and issue a written reply to the taxpayer within thirty (30) calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the aggrieved person or entity desire to seek review of such a decision, or if the city fails to issue a written opinion to the taxpayer within the thirty (30) calendar day time period, the taxpayer shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in [section 15-46](#).

Sec. 15-46. - Administration; procedure for grievances and appeals.

The director of finance shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this article, the following procedure shall apply:

- (a) A notice of appeal must be filed within fifteen (15) calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision complained of. The notice of appeal shall also contain an address for receipt of future notices and decisions of the certificate hearing officer. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.
- (b) Upon receipt of a timely and proper notice of appeal, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the hearing officer within forty-five (45) calendar days of the date the notice of appeal is filed, but no sooner than ten (10) calendar days after appellant receives notice of the hearing. The director shall transmit to the hearing officer all documents or materials constituting the record of the action or proceedings below.
- (c) If the finance director deems it necessary that an audit of the financial books/records of appellant be conducted, the city shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. The finance director may hire outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.

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- (d) An appeal under this section shall stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enjoin any violation of this article or of any other article of this Code.
 - (e) Certificate review. In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - (1) The certificate review hearing officer shall convene the hearing. The hearing officer shall be appointed by the Mayor and approved by the City Council. The hearing officer shall have the following duties:
 - (i) To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to Chapter 15 of this Code;
 - (ii) To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to Chapter 15 of this Code.
 - (iii) To hear appeals from the decisions of the police department denying the issuance of permits pertaining to Chapter 15 of this Code;
 - (iv) To hear appeals from the decisions of the police department revoking or suspending an employee permit to Chapter 15 of this Code.
 - (2) The proceeding before the hearing officer shall be recorded, and all documents and other materials considered by the certificate hearing officer shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing.
 - (3) Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the hearing officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
 - (4) The hearing officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the hearing officer are to be supported by the evidence accepted and admitted during the hearing.
 - (5) The city shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
 - (6) The order of proof shall be as follows: The city representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one (1) case-in-rebuttal.
 - (7) The appellant and city may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the hearing officer are permitted to question witnesses. A party is permitted no more than fifteen (15) minutes to present that party's case-in-chief; a case-in-rebuttal is permitted no more than ten (10) minutes of presentation. Presentation of augments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted or admitted by the hearing officer nor considered by the hearing officer.
 - (8) Following the presentation of evidence, the hearing officer shall issue a written decision within thirty (30) calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the hearing officer fail to issue a timely decision, on the thirty-first day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.
 - (9) The findings of the hearing officer shall be final unless a party files a petition for writ of certiorari to the superior court of DeKalb County within thirty (30) calendar days of the decision of the hearing officer.

Sec. 15-47. - Promulgation of rules, regulations.

The finance department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of this state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

Sec. 15-48. - Requirement for public hearings.

The city shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax, and in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

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Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, 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.

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

SO ORDANINED AND EFFECTIVE this 12th day of February, 2013.

Approved by:

J Max Davis, Mayor

Attest: _____
Susan Hiott, City Clerk

Seal

Approved as to Form: _____
William F. Riley, Acting City Attorney

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CODE OF CITY OF BROOKHAVEN

Chapter 15 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

**Chapter 15 - LICENSES, PERMITS AND
MISCELLANEOUS BUSINESS REGULATIONS ^[61]**

ARTICLE I. - IN GENERAL

ARTICLE II. - BUSINESS OCCUPATION TAXES

ARTICLE III. - ASTROLOGERS

ARTICLE IV. - GOING-OUT-OF-BUSINESS SALES

ARTICLE V. - PAWNSHOPS

ARTICLE VI. - PRECIOUS METAL DEALERS

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ARTICLE XII. - ADULT ENTERTAINMENT ESTABLISHMENTS

ARTICLE XIII. - MULTIFAMILY RENTAL DWELLINGS

ARTICLE I. - IN GENERAL

Sec. 15-1. - Security information—Required.

All persons subject to the provisions of this chapter shall furnish to the police department, on a form supplied by the police department, any and all information necessary to indicate the security measures located at such person's business, trade or profession and the persons to be notified in the event of an emergency of the business, trade or profession.

Sec. 15-2. - Same—Furnished with license application.

All persons applying for a new or renewal license under the provisions of this chapter shall be required, at the time of application, to furnish the information required in [section 15-1](#), and to keep the information current.

Sec. 15-3. - Emergency decal.

All persons subject to the provisions of this chapter shall be furnished by the police department with an emergency decal containing thereon a coded number; it shall be the responsibility of the owner, operator

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CODE OF CITY OF BROOKHAVEN

Chapter 15 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

or manager of the business to affix the decal to the main entrance of the business. The decal shall be placed at approximate eye level on the main entrance, and if the decal cannot be placed on the main entrance, it shall be placed on the most conspicuous location as close as possible to the main entrance to the business.

Sec. 15-4. - Carnivals, sideshows, etc.; permit required prior to issuance of license.

No license shall be granted for the operation of a carnival, sideshow or similar exhibition on a vacant lot or in any open place where performances of any kind are given or where machinery of any kind or devices of any kind are operated for amusement unless a permit is obtained. Applications for this permit, accompanied by a fee in the amount established by action of the City Council, a copy of which is on file in the office of their clerk, shall be filed with the police department. The application shall contain such information as the police department requires.

Secs. 15-5—15-25. - Reserved.

ARTICLE II. - BUSINESS OCCUPATION TAXES ¹⁵²¹

Sec. 15-26. - Generally.

- (a) Each person engaged in a business, trade, profession or occupation whether with a location within the city, or in the case of an out of state business with no location in Georgia exerting substantial efforts within the city pursuant to O.C.G.A section 48-13-7 shall pay an occupational tax for said business, trade, profession or occupation.
- (b) Occupation taxes shall be based upon gross receipts in combination with profitability ratio and number of employees. The profitability ratio for the type of business will be determined from nationwide averages derived from statistics, classifications or other information published by the United States Office of Management and Budget, the United States Internal Revenue Service or successor agencies of the United States.
- (c) A schedule of specific business occupation taxes, as adopted from time to time by the City Council is on file in the office of the clerk, and shall be levied and collected in the amount and manner specified by this article.

Sec. 15-27. - Definitions of terms used in this article.

- (a) Wherever the term "city" is used in this article, it shall be construed to mean the incorporated areas within the municipal boundaries of the City of Brookhaven, Georgia.
- (b) Other terms used in this article:
 - (1) *Administrative fee* is a component of the occupational tax which approximates the cost of handling and processing the occupational tax.
 - (2) *Applicant* or *holder* means the applicant for, or holder of, a business occupation tax certificate, and shall include the business and any legally or organizationally related entity to which the occupational tax certificate applies.

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Chapter 15 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

- (3) *Business* where used in this article shall be held to mean any person, sole proprietor, partnership, corporation, trade, profession, occupation or other entity and the efforts or activities associated thereby for the purposes of raising revenue or producing income.
- (4) *Director* means the director of finance or his or her designee.
- (5) *Dominant line means the type of business within a multiple line business from which the greatest amount of income is derived.*
- (6) *Employee* means an individual whose work is performed under the direction and supervision of the employer and whose employer withholds FICA, federal income tax, or state income tax from such individual's compensation or whose employer issues to such individual for purposes of documenting compensation a form I.R.S. W-2 but not a form I.R.S. 1099.
- (7) *Gross receipts* means total revenue of the business or practitioner for the period, including without being limited to the following:
 - a. Total income without deduction for the cost of goods sold or expenses incurred;
 - b. Gain from trading in stocks, bonds, capital assets, or instruments of indebtedness;
 - c. Proceeds from commissions on the sale of property, goods, or services;
 - d. Proceeds from fees charged for services rendered;
 - e. Proceeds from rent, interest, royalty, or dividend income; and
 - f. From all other income whatsoever arising from or growing out of the conduct of the business, trade, profession or occupation without any deduction whatsoever,
 except that gross receipts shall not include the following:
 - a. Sales, use, or excise taxes;
 - b. Sales returns, allowances, and discounts;
 - c. Interorganizational sales or transfers between or among the units of a parent-subsidiary controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(1), between or among the units of a brother-sister controlled group of corporations as defined by 26 U.S.C. section 1563 (a)(2), or between or among wholly owned partnerships or other wholly owned entities;
 - d. Payments made to a subcontractor or independent agent;
 - e. Governmental and foundation grants, charitable contributions or the interest income derived from such funds, received by a non profit organization which employs salaried practitioners otherwise covered by this article, if such funds constitute eighty (80) percent or more of the organization's receipts; and
 - f. Proceeds from sales to customers outside the geographical boundaries of the State of Georgia.
- (8) *License means a permit or certificate issued by the city that allows an entity to operate lawfully in the city. A license does not create any rights to operate in violation of any provision of this Code and it may be denied, suspended or revoked by the city at any time pursuant to the procedures set forth herein. This definition applies to any license issued pursuant to this chapter.*
- (9) *Location or office* shall include any structure or any vehicle of a business or practitioner of a profession or occupation which has a location or office where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or delivery vehicles of a business or practitioner of a profession or occupation which has a location or office.

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Chapter 15 - LICENSES, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS

- (10) *Occupation tax* means a tax levied on persons, partnerships, corporations or other entities for engaging in an occupation, trade, profession or business for revenue raising or income producing purposes.
- (11) *Person* wherever used in this article shall be held to include sole proprietors, corporations, partnerships, nonprofit or any other form of business organization.
- (12) *Practitioner of professions and occupants* means one who by state law requires state licensure regulating such profession or occupation. This definition shall not include a practitioner who is an employee of a business, if the business pays an occupation tax.
- (13) *Regulatory fees* means payments, whether designated as license fees, permit fees or by another name, which are required as an exercise of police power and as a part of or as an aid to regulation of an occupation, profession or business. Regulatory fees shall not include an administrative fee. Regulatory fees do not include development impact fees as defined by paragraph 8 of O.C.G.A. section 36-71-2 or other costs or conditions of zoning or land development.

Sec. 15-28. - Registration of name of business; payment of taxes required

- (a) No person shall be engaged in, pursue or carry on any business within the city, in any manner without having registered the name of the business with the finance department and either paid the taxes as provided by this article or produced evidence of occupational tax payment to another jurisdiction in the State of Georgia or proof of payment of a local business occupation tax in another state which purports to tax the business' or practitioner's sales or services in this state. The city shall not require an occupation tax on those receipts that were taxed by occupation tax in other states.
- (b) At the time of business registration, such person shall also identify to the finance department the line or lines of business that the business conducts. Classification of businesses for occupation tax purposes shall be based on the dominant line of business conducted.
- (c) Each separate business trade name shall be subject to the provisions of this article and shall fully comply with all city code requirements before engaging in, pursuing or carrying on any business within the city.
- (d) Failure or refusal to provide information requested by the city for the purpose of classification, assessment or levying of occupation taxes, regulatory fees or administrative costs or regarding the site of a location or office and taxes or fees paid to other local governments shall be punished as a under the general penalties and shall be subject to the provisions of this Code.

Sec. 15-29. - Estimation of gross receipts; filing of returns.

- (a) All occupation taxes levied by this article are levied on the amount of business transacted during the current calendar year and the number of employees to be employed in the business conducted. However, for convenience of both the city and the taxpayer those businesses subject to the occupational tax shall on or before February 1 file with the finance department's business occupation tax section a return showing all gross receipts of that business during the preceding calendar year ending on December 31. This return showing preceding calendar year gross receipts shall be used as an estimate of gross receipts for making payments on the occupation tax for the current calendar year. The number of employees reported for the current year's business operations may be based upon the number of employees employed in the business conducted during the previous year. Applicants or owners engaged in the business shall be reported as employees of the business. Should a business not continue or terminate during the year, such business shall notify the finance department and file a final return reporting the actual number of employees and those gross receipts not previously reported.
- (b) Where a business subject to the occupation tax for the calendar year has been conducted for only a part of the preceding year, the amount of gross receipts for such part shall be set forth in said return.

Deleted: For continuing businesses, the return required on or before February 1 showing the business' preceding year's actual gross receipts and number of employees shall also be used to adjust the estimated return for the same period. Differences will be billed or credited to the business' occupational tax billing as required.

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Said return shall also show a figure putting the receipts for such part of a year on an annual basis with the part-year receipts bearing the same ratio to the whole-year gross receipts as the part year bears to the whole year. Said figure shall be used as the estimate of the gross receipts of the business for the current calendar year in establishing the business tax liability.

- (c) If a business is to begin on or after January 1 of the occupation tax year, the tax on such business shall be due and payable on the date of the commencement of the business and shall be based upon estimated gross receipts of the business from the date of commencement until the end of the calendar year. The business shall also file the required registration form and shall pay the administrative fee required by this article. Notwithstanding the foregoing, if a lawyer begins business after January 1 of the occupation tax year, the tax and administrative fee on such business shall be due and payable on December 31 of the year in which the business begins. Any lawyer failing to pay the occupation tax and administrative fee within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (d) The city shall not require the payment of more than one (1) occupational tax for each location that a business or practitioner shall have nor shall the city require a business to pay an occupational tax for more than one hundred (100) percent of the business' gross receipts.
- (e) Real estate brokers shall pay an occupational tax for each principal office and each separate branch office located in the city based upon gross receipts derived from transactions with respect to property located within the city. Payment of the occupation tax shall permit the broker, the broker's affiliated associates and salespersons to engage in all of the brokerage activities described in O.C.G.A. [section] 43-40-1 without further licensing or taxing other than the state licenses issued pursuant to chapter 40 of Title 43
- (f) For out of state businesses with no location in Georgia, occupation taxes include the gross receipts of business as defined in section 15-33 of this article titled paying occupation tax of business with no location in Georgia.
- (g) For purposes of this section, prima facie evidence of gross receipts generated during any period shall be a copy of the business' federal income tax return or an affidavit of the business' accounting firm.

Sec. 15-30. - Administrative and regulatory fees.

- (a) Council may establish a non prorated, non refundable administrative fee required on all business occupation tax accounts for the initial start up, renewal or reopening of those accounts. Such fee, if established, shall be applicable to all accounts.
- (b) Council may establish a regulatory fee to be imposed on those applicable businesses listed under O.C.G.A. section 48-13-9(b) that the city deems necessary to regulate. Such fee, if established, shall be applicable to all accounts.

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Sec. 15-31. - Separate registration for separate locations or separate tradenames

Where a person conducts business at more than one (1) fixed location or has multiple business tradenames, each location or place and each tradename shall be considered to be separate for the purpose

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of the occupation tax and the gross receipts of each will be returned on a form furnished by the finance department in accordance with the provisions of this article.

Sec. 15-32. - Renewal returns and applications; due date; penalty for late payment.

- (a) Notwithstanding 1995 exception reporting date of gross receipts for implementation of this chapter, on or before February 1 of each subsequent year businesses liable for occupation taxes levied under this article for the year shall file with the finance department, on a form furnished by the finance department, a signed return setting forth the actual amount of the gross receipts of such business during the preceding calendar year ending December 31.
- (b) Occupational taxes on businesses continuing from the preceding year shall be due and payable on January 1 of each subsequent year. Occupational tax due from businesses continuing operation in the current year from the preceding year shall be considered delinquent if not paid by April 15 of each year. Any business failing to pay the occupational taxes and administrative fees within one hundred twenty (120) days after January 1 shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one (1) percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the tax year in addition to interest on delinquent occupation taxes, regulatory fees and administrative fees.
- (c) If any person or business whose duty it is to obtain a registration in the city begins to transact or offers to transact any kind of business after said registration or occupation tax becomes delinquent, such offender shall be assessed interest according to the rate as provided by state law and penalties under the city Code.
- (d) On any new business begun in the city and not subject to payment of occupational taxes to the City of Brookhaven, failure to register the name of the business and the line or lines of business that the business conducts will be subject to possible penalties or other violations of the city Code . Registration under this section is required for insuring business to be conducted complies with city codes or ordinances governing health, safety and other purposes.
- (e) Notwithstanding the foregoing, occupation taxes and administrative fees for lawyers shall be due and payable on December 31 of the year in which the tax is incurred. Any lawyer failing to pay the occupation tax and administrative fees within one hundred twenty (120) days after December 31 shall be considered delinquent and shall be subject to and shall pay a ten (10) percent penalty of the amount of tax or fee due and interest of one (1) percent per month as provided by state law. Such penalty shall be assessed in full on May 1 of the year following the tax year in addition to interest on delinquent occupational taxes and administrative fees. In addition, a list of all delinquent lawyers may be sent to the State Bar of Georgia. Certain general penalties applicable to most businesses for continuing violations of this Code shall not apply to violations of this chapter by lawyers. Specifically, failing to comply with the article will not result in the city closing the business or penalizing the continued practice of law by fining, imprisoning or criminalizing noncompliance.
- (f) In addition to the above remedies, the finance department may issue an execution for failure to pay taxes against the person so delinquent and against such person's property for the amount of the occupational tax required to be paid for the purpose of carrying on any of the businesses enumerated in this article.

Sec. 15-33. - Paying occupation tax of business with no location in Georgia.

Registration and the assessment of an occupation tax is hereby imposed on those businesses and practitioners of professions and occupations with no location or office in the State of Georgia if the business' largest dollar volume of business in Georgia is in the City of Brookhaven, Georgia, and the business or practitioner:

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- (1) Has one (1) or more employees or agents who exert substantial efforts within the jurisdiction of the City of Brookhaven, Georgia, for the purpose of soliciting business or serving customers or clients; or
- (2) Owns personal or real property which generates income and which is located within the City of Brookhaven, Georgia.

Sec. 15-34. - Professionals classified in O.C.G.A. section 48-13-9(c), Paragraphs 1 through 18.

Practitioners of professions as described in O.C.G.A. section 48-13-9(c)(1) through (18) shall elect as their entire occupation tax one (1) of the following:

- (1) The occupation tax based-on number of employees and gross receipts combined with profitability ratios as set forth in this article; or
- (2) An established fee [described in O.C.G.A. section 48-13-9\(c\)\(1\) through \(18\)](#). Such fee is per practitioner who is licensed by the state to provide the service, such tax to be paid at the practitioner's office or location. Practitioners paying according to this paragraph shall pay the fee per practitioner and shall not be required to provide information relating to gross receipts or number of employees of the business or practitioner.
- (3) Any practitioner whose office is maintained by and who is employed in practice exclusively by instrumentalities of the United States, the state, a municipality or county of the state, shall not be required to register or pay an occupation tax for that practice.

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Sec. 15-35. - Purpose and scope of tax.

The occupation tax levied herein is for revenue purposes only and is not for regulatory purposes, nor is the payment of the tax made a condition precedent to the practice of any profession, trade or calling.

Sec. 15-36. - Evidence of state registration required if applicable; city and state registration to be displayed.

- (a) Each person who is licensed by the Secretary of State pursuant to [Title 43](#) of the Official Code of Georgia Annotated shall provide evidence of proper and current state licensure before the city registration may be issued.
- (b) Each person who is licensed by the state shall post the state license next to the city registration in a conspicuous place in the licensee's place of business and shall keep both the state license and the city registration there at all times while valid.
- (c) Any transient or nonresident person doing business within the city shall carry their occupational tax receipt either upon such person or in any vehicle or other conveyance which is used in such business, and such person shall exhibit it to any authorized enforcement officer of the city when so requested.

Sec. 15-37. - Change of location.

Any person moving from one (1) location to another shall notify the finance department of this move and the new address in writing on a form provided by the finance department prior to the day of the moving. A new receipt for the occupational tax will be issued for the new location if the new location conforms to the zoning regulations of the city.

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Sec. 15-38. - Transferability.

Occupational receipts shall not be transferable and a transfer of ownership shall be considered in the same light as the termination of the business and the establishment of a new business. Filing a new registration application and payment of applicable fees and taxes shall be required of the new owner of the business.

Sec. 15-39. - Evidence of qualification required if applicable.

Any business required to obtain health permits, bonds, certificates of qualification, certificates of competency or any other regulatory matter shall first, before the issuance of city registration, show evidence of such qualification.

Sec. 15-40. - Inspections of books and records; audits; confidential information.

- (a) The finance department shall have the right to inspect the books or records of any business for which returns have been made and upon demand of the finance department such books or records shall be submitted for inspection by a representative or agent of the city within thirty (30) days. Independent auditors or bookkeepers employed by the city shall be classified as agents for the purposes of this article. Failure of submission of such books and records within thirty (30) days shall be grounds for revocation of the occupation tax registration currently existing in the city. If it is determined that a deficiency exists as a result of under reporting, additional payment of occupation taxes required to be paid under this article shall be assessed the interest as provided by state law and penalties provided for by city code. Notwithstanding the foregoing, no attorney shall be required to disclose any information that would violate the attorney/client privilege.
- (b) Except as provided in paragraph (c) of this section, information provided by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner is confidential and exempt from disclosure under Article 4 of [Chapter 18](#) of Title 50.
- (c) Information provided to the city by a business or practitioner of an occupation or profession for the purpose of determining the amount of occupation tax for the business or practitioner may be disclosed to the City Council of another local government for occupation tax purposes or pursuant to court order or for the purpose of collection of occupation tax or prosecution for failure or refusal to pay occupation tax.
- (d) Nothing herein shall be construed to prohibit the publication by the city of statistics, so classified as to prevent the identification of particular reports or returns and items thereof.

Sec. 15-41. - Business classifications for determining tax levy.

- (a) For the purpose of this article, every person engaged in business requiring the payment of occupational taxes is classified in accordance to the major line of business as defined by the North American Industrial Classification System (NAICS); and profitability classes are assigned in accordance with Statistics of Income, Business Income Tax Returns, United States Treasury Department, Internal Revenue Service. The finance department shall review assignment of businesses to profitability classes on a biannual basis and shall administratively reassign businesses as necessary to the then most accurate profitability class.
- (b) Classifications by business profitability have been established by the City Council and are incorporated herein by reference and adopted for use in the application of this article. All separate businesses engaged in more than one (1) business activity shall be classified on the basis of their dominant business activity at each location where business is done; except, that a person whose dominant

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business activity is legally exempt as defined by this article shall be classified according to such person's principal subsidiary business, if any, which is subject to the levy and assessment of occupation taxes.

- (c) The occupation tax shall be determined by applying the business' gross receipts and number of employees returned to the city to the business' profitability classification established for each business type.
- (d) A copy of business classifications shall be maintained in the office of the city clerk and shall be available for inspection by all interested persons.

Sec. 15-42. - Casual and isolated transactions.

Nothing in this article shall be interpreted to require any person who may engage in casual or isolated activity and commercial transactions, where they involve personal assets, are not the principal occupation of the individual, ~~and gross less than \$12,000 in otherwise taxable receipts per year~~, to pay occupational tax therefor. Street vendor, transient vendor or flea market vendor activities shall not be considered to be casual and isolated business transactions and shall be required to comply with the provisions of this article.

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Sec. 15-43. - Exemption for disabled veterans, disabled indigent persons, certain organizations.

- (a) Persons who qualify for a state veteran's or disabled indigent person's license shall be eligible for exemption from the city occupational tax fee. Any such person claiming an exemption shall secure evidence of qualification for the exemption from the proper authority and present it to the finance department.
- (b) Organizations which are exempt from federal income taxation under section 501(c)(3) or section 501(c)(4) of the United States Internal Revenue Code shall be eligible for exemption from the city occupational tax. Any such organization claiming an exemption shall provide to the finance department a federal tax exemption letter showing the code section under which an exemption is claimed. However, with respect to any activity for which an organization otherwise entitled to an exemption under this section shall be liable for federal income tax on unrelated business income or shall be deemed to be a feeder organization under the United States Internal Revenue Code, the exemption from payment of occupational taxes shall not be available.
- (c) Notwithstanding the exemption from payment of city occupation taxes, an exempt person or business shall comply with the same laws and regulations as are required of other registered businesses.

Sec. 15-44. - Exclusions from article; special classifications.

- (a) Wholesale dealers in liquor, wine, beer, and malt beverages are not required to pay the business occupation taxes provided for in this article.
- (b) Registration and occupational tax payment is required from any satellite subscription television system. Satellite subscription television system means services provided to subscribers for sale where the provider of the services utilizes a master antenna type system or earth dish system designed to receive and distribute satellite television signals; particularly, a system to provide service to one (1) or more multiple unit dwellings under common ownership wherein any wiring necessary to operate the system does not cross adjacent non owned property lines and does not cross city right-of-way in the city. The provisions of this paragraph shall not apply to any person that is subject to the City of Brookhaven's Franchise Fee for the holders of a cable or video service provider state franchise.

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- (c) Registration and occupational tax payment is required from any broadcast subscription television system. Broadcast subscription television system means services provided to subscribers for sale where the provider of the services transmits premium programming from one (1) or multiple sources by transmitting or retransmitting programs to the public.
- (d) Any vendor or exhibitor who is a member of a group or collection of vendors or exhibitors that has come together at one (1) location for the purpose of selling arts, crafts, antiques, or other goods for a period not to exceed ten (10) consecutive days may be registered individually, or the group or collection may be registered as a "special event." Any applicant for a special event shall be considered as the promoter of the special event and shall be responsible for registration of the special event and paying the occupational taxes. Any special event group or collection of vendors or exhibitors shall comply with the same laws and regulations as required of other registered businesses, where applicable.
- (e) As part of the city's economic development incentives and only to the extent as described in O.C.G.A. section 48-13-10, the City Council may by ordinance or resolution provide for an exemption or reduction in occupation tax or a credit against occupation tax owed to one or more types of businesses or practitioners of occupations or professions as part of a plan for economic development or attracting, encouraging, or maintaining selected types of businesses or practitioners of selected occupations or professions. Such exemptions or reductions in occupation tax shall not be arbitrary or capricious. Exemptions under this paragraph shall not exceed ten (10) percent of the business' total annual gross receipts.

Sec. 15-45. - Denial, revocation or suspension of business occupation tax certificate.

- (a) *Grounds for denial, revocation, or suspension of business occupation tax certificate.* A business occupation tax certificate issued pursuant to any provision of this article shall be denied, revoked or suspended, and considered void, upon one (1) or more of the following grounds:
 - (1) The original application or renewal thereof contains false or misleading information, or the applicant omitted material facts in the application;
 - (2) The premises covered by the certificate are found to be in violation of any codes or ordinances of the city;
 - (3) The applicant for, or holder of, the certificate is engaged in the business or occupation under a false or assumed name, or is impersonating another practitioner of a like or different name;
 - (4) The applicant for, or holder of, the certificate is engaging in false, misleading, or deceptive advertising or practices;
 - (5) The holder of the certificate is operating under a business or trade name not listed on the current application on file with the city;
 - (6) The holder of the certificate fails to maintain the initial requirements for obtaining the certificate;
 - (7) The applicant for, or holder of, a certificate is classified as, or becomes classified as, a habitual violator under Title 40, Chapter 5 of the Official Code of Georgia Annotated, or is found to be operating the business under the influence of alcohol or of illegal drugs or substances;
 - (8) The applicant for, or holder of, the certificate has been convicted of or has pled guilty or *nolo contendere* to any sexual offense, the offense of false swearing, the offense of operating an adult entertainment establishment in violation of the distance requirements of Title 36, Chapter 60 of the Official Code of Georgia Annotated, or to any offense involving illegal sale of narcotics or possession or receipt of stolen property, for a period of five years prior to the filing of the application. If after having been granted a certificate, the applicant is convicted, pleads guilty or enters a plea of *nolo contendere* to any of the above offenses, said certificate shall be subject to suspension and/or revocation;

Deleted: for encouraging location or maintaining businesses in the city, any business or practitioner may request an exception from reporting gross receipts from sales of goods or services from atypical business operations. Requests must be submitted in writing to the finance director and outline the usual business activities conducted and the usual annual gross receipts therefrom, the atypical sales of goods and services and total gross receipts therefrom, and the reason such exemption is requested

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- (9) The applicant for, or holder of, the certificate fails to pay occupation taxes and administrative fees when due;
 - (10) The establishment has been declared a public or private nuisance or has created a threat or nuisance to public health, safety or welfare; or
 - (11) Any other violation of this article.
- (b) *False or misleading information.* No business occupation tax certificate shall be issued or renewed pursuant to any provisions of this article to any applicant, business or legally or organizationally related entity if within the twelve (12) months immediately preceding the filing of any application under this chapter the same applicant, business or legally or organizationally related entity has been denied a certificate or had a certificate revoked for any location based in whole or in part upon having furnished false or misleading information in any application or having omitted material facts in any application.
- (c) *Notice of denial, revocation or suspension of certificate.* Upon denial of an application seeking issuance or renewal of a business occupation tax certificate, or revocation or suspension of a business occupation tax certificate, written notification shall be provided of such decision to the applicant or holder of the certificate within five (5) calendar days. The written notification shall state the grounds for the denial, revocation or suspension, and shall be served via hand delivery to the applicant or holder at the business location and sending a copy of such notice via registered mail, return receipt requested, to the address listed by the applicant or holder on the application for a certificate.

Sec. 15-45.1. - Grievances regarding occupation tax assessment or classification.

For grievances regarding the occupation tax assessed or the major line of business classification, the aggrieved person or entity shall first submit in writing a complaint [to the City Clerk](#) which shall set forth in reasonable detail the matters complained of. The complaint may take letter form, and it shall be the duty of the city to review the complaint and issue a written reply to the taxpayer within thirty (30) calendar days from the date the complaint is received. The written reply shall state in reasonable detail the basis for the decision regarding the initial assessment and classification. Should the aggrieved person or entity desire to seek review of such a decision, or if the [city](#) fails to issue a written opinion to the taxpayer within the thirty (30) calendar day time period, the taxpayer shall be entitled to appeal to the certificate review hearing officer pursuant to the procedure set forth in [section 15-46](#).

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Sec. 15-46. - Administration; procedure for grievances and appeals.

The director of finance shall administer and enforce the provisions of this article. Should an aggrieved person or entity desire to appeal a decision under this article, the following procedure shall apply:

- (a) A notice of appeal must be filed within fifteen (15) calendar days after receipt of the decision complained of. The notice of appeal shall be in the form of a letter, and shall clearly identify all of the objections or exceptions taken to the decision complained of. The notice of appeal shall also contain an address for receipt of future notices and decisions of the certificate hearing officer. Should the aggrieved person or entity fail to file a notice of appeal within the time allowed, the right to appeal is lost.
- (b) Upon receipt of a timely and proper notice of appeal, appellant shall be notified, in writing, of the date, time and place where a hearing will be held. The hearing shall be held before the hearing officer within forty-five (45) calendar days of the date the notice of appeal is filed, but no sooner than ten (10) calendar days after appellant receives notice of the hearing. The director shall transmit to the hearing officer all documents or materials constituting the record of the action or proceedings below.
- (c) If the finance director deems it necessary that an audit of the financial books/records of appellant be conducted, the city shall notify appellant in writing of a reasonable date, time and place for the audit, which shall be conducted prior to the date of a hearing on the matter. The finance director may hire

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outside auditors for this purpose. The expense of hiring outside auditors shall be borne by the city if the position of the appellant is sustained by the audit. If not, the expense of the outside auditors shall be due and payable from appellant as part of the costs of appeal.

- (d) An appeal under this section shall stay all legal proceedings with regard to collection of the occupation tax from an appellant; however, such appeal shall not preclude the city from pursuing legal proceedings to enforce any violation of this article or of any other article of this Code.
- (e) Certificate review. In all hearings pursuant to this section, the following procedures shall prevail, and the proceeding shall be as informal as compatible with justice:
 - (1) The certificate review hearing officer shall convene the hearing. The hearing officer shall be appointed by the Mayor and approved by the City Council. The hearing officer shall have the following duties:
 - (i) To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to Chapter 15 of this Code;
 - (ii) To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to Chapter 15 of this Code.
 - (iii) To hear appeals from the decisions of the police department denying the issuance of permits pertaining to Chapter 15 of this Code;
 - (iv) To hear appeals from the decisions of the police department revoking or suspending an employee permit to Chapter 15 of this Code.
 - (2) The proceeding before the hearing officer shall be recorded, and all documents and other materials considered by the certificate hearing officer shall be preserved as the record of the proceedings. The record of the proceedings shall be preserved for not less than one hundred fifty (150) calendar days after the hearing.
 - (3) Any alleged violations or misconduct levied against the appellant and scheduled for a hearing before the hearing officer shall be read completely to appellant at the commencement of the hearing, unless waived by appellant.
 - (4) The hearing officer may receive evidence in support of the alleged violations or misconduct as filed against appellant. Decisions of the hearing officer are to be supported by the evidence accepted and admitted during the hearing.
 - (5) The city shall bear the burden of proof. The standard of proof shall be by a preponderance of the evidence.
 - (6) The order of proof shall be as follows: The city representative shall present the case-in-chief in support of the alleged violations or misconduct; the appellant may present a case-in-chief, if desired. Each party may be allowed to present one (1) case-in-rebuttal.
 - (7) The appellant and city may be represented by counsel, may present evidence, and may examine and cross-examine witnesses. Additionally, the hearing officer are permitted to question witnesses. A party is permitted no more than fifteen (15) minutes to present that party's case-in-chief, a case-in-rebuttal is permitted no more than ten (10) minutes of presentation. Presentation of arguments and evidence may be in oral or written form, except that affidavits of individuals who are unavailable for cross-examination shall not be accepted or admitted by the hearing officer nor considered by the hearing officer.
 - (8) Following the presentation of evidence, the hearing officer shall issue a written decision within thirty (30) calendar days of the date of the hearing. A copy of the decision shall be mailed, via registered or certified mail, to the parties or the parties' representatives. For the appellant, the decision shall be mailed to the address provided on the notice of appeal. Should the hearing officer fail to issue a timely decision, on the thirty-first day after the date of the hearing appellant may seek review as if a decision adverse to appellant had been rendered.

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- (9) The findings of the hearing officer shall be final unless a party files a petition for writ of certiorari to the superior court of DeKalb County within thirty (30) calendar days of the decision of the hearing officer.

Sec. 15-47. - Promulgation of rules, regulations.

The finance department shall have the power and authority to make and publish reasonable rules and regulations not inconsistent with this article or other laws of the city and the state, or the constitution of this state or the constitution of the United States, for the administration and enforcement of the provisions of this article and the collection of the occupational tax.

Sec. 15-48. - Requirement for public hearings.

The city shall conduct at least one (1) public hearing before adopting any ordinance or resolution regarding the occupation tax, and in any year when revenue from occupational taxes is greater than revenue from occupational taxes for the preceding year in order to determine how to use the additional revenue.

Secs. 15-49—15-70. - Reserved.

ARTICLE III. - ASTROLOGERS ^[53]

Sec. 15-71. - Definition.

In this article, "astrology" means the interpretation of human experience based upon an examination and correlation to celestial activity for fee, gift or donation.

Sec. 15-72. - Applicability.

This article governs the practice of astrology in the city.

Sec. 15-73. - Penalty.

Any person violating any of the provisions of this article shall be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment for a term not exceeding sixty (60) days, or both.

Sec. 15-74. - License—Required.

It shall be unlawful for any person to practice astrology in the city unless such person holds a valid, unexpired and unrevoked license to engage in such practice in astrology issued by the city.

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AN ONE READ ORDINANCE PROVIDING FOR THE AMENDMENT OF CHAPTER 4 - ALCOHOLIC BEVERAGES TO AMEND SECTION 4-56 (A) ALCOHOLIC BEVERAGE APPEALS HEARING OFFICER AMENDING THAT ALCOHOLIC BEVERAGE APPEALS SHALL BE HEARD BY A HEARING BOARD INSTEAD OF HEARING OFFICER AND THE DEFINITION OF HEARING BOARD BE ADDED TO SECTION 4-1 DEFINITIONS

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BROOKHAVEN HEREBY ORDAINS:

That Section 4-56 (a) of Chapter 4, Alcoholic Beverage Appeals Hearing Officer of the Code of Ordinances of the City of Brookhaven be amended to read:

- (a) The alcoholic beverage appeals shall be heard by a hearing board, a board consisting of a minimum of three (3) and no more than five (5) members, appointed by the Mayor and confirmed by City Council, who shall have the following duties:
 - (1) To hear appeals from decisions of the finance department denying the issuance or renewal of any license pertaining to the sale of alcoholic beverages in the city;
 - (2) To hear appeals from the decisions of the finance department revoking or suspending any license pertaining to the sale of alcoholic beverages in the city;
 - (3) To hear appeals from the decisions of the police department denying the issuance of permits pertaining to employment in a licensed establishment;
 - (4) To hear appeals from the decisions of the police department revoking or suspending an employee permit to an employee of a licensed establishment.

That Section 4-1 Definitions be amended to add the definition for *hearing board*:

Hearing board – a board consisting of a minimum of three (3) and no more than five (5) members, appointed by the Mayor and confirmed by City Council.

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, 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.

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

SO ORDANINED AND EFFECTIVE this 12th day of February, 2013.

Approved by:

J Max Davis, Mayor

Attest: _____
Susan Hiott, City Clerk

Approved as to form:

Seal

William F. Riley, Acting City Attorney



L8

MEMORANDUM

AGENDA # ID _____

L8

MEETING OF

February 12, 2013

DISTRICT/COMMITTEE:

Finance Department

ISSUE/AGENDA ITEM TITLE:

First Read of an Ordinance to Adopt a Budgetary Policy

BACKGROUND/SUMMARY: Section 5.02 of the City's charter states, "The city council shall provide, by ordinance, the procedures and requirements for the preparation and execution of an annual operating budget and a capital budget, including requirements as to the scope, content, and form of such budgets and programs."

The attached document is provided for your review and comment. It combines state law, charter requirements and best practices as a policy guidance document for the preparation of the annual budget.

FISCAL IMPACT: (Budgeted – over or under)

None

STAFF RECOMMENDATION:

Staff recommends Council carefully review the attached document to provide comments and suggestions for adoption at the February 26, 2013 Council meeting.

ATTACHMENTS:

Ordinance to Adopt a Budgetary Policy
Proposed Budgetary Policy

L8

AN ONE READ ORDINANCE TO AMEND CHAPTER 2 ADMINISTRATION BY ADDING SECTION 2-66 BUDGETERY POLICIES, ADOPTING THE POLICY RELATING TO THE BUDGETARY PROCESS, AS A COMPONENT OF THE FINANCIAL MANAGEMENT PROGRAM FOR THE CITY OF BROOKHAVEN, GA; AND TO PROVIDE FOR GUIDANCE IN ADMINISTERING THE POLICY

WHEREAS: Section 5.02 of the City of Brookhaven Charter requires the City Council by Ordinance to prescribe procedures and requirements for the preparation and execution of an annual operating budget and a capital budget, including requirements as to the scope, content, and form of such budgets and programs for the City;

WHEREAS: The Ordinance relating to Chapter 2, Administration, be amended by adding Section 2-66 Budgetary Policy and the Budgetary Policy is hereby adopted and approved; and is attached hereto as if fully set forth herein;

WHEREAS: This **One Read** Ordinance shall become effective upon its adoption.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BROOKHAVEN HEREBY ORDAINS:

That Section 2-66 of Chapter 2, Administration, Budgetary Policies of the Code of Ordinances of the City of Brookhaven be added and the Budgetary Policy is hereby adopted and approved; and is attached hereto as if fully set forth herein;

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, 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.

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

SO ORDANINED AND EFFECTIVE this 12th day of February, 2013.

Approved by:

J Max Davis, Mayor

Attest: _____
Susan Hiott, City Clerk

Seal

Approved as to Form: _____
William F. Riley, Acting City Attorney

8

Financial Management Policies
BUDGETARY POLICY

City of Brookhaven, GA

Developed under the Authority of the
City Council by the Department of
Finance, and approved by ordinance

SECTION I. GENERAL BUDGET POLICIES

Georgia law (e.g., O.C.G.A. 36-81-2 et seq.) provides the budget requirements for Georgia local governments. The City’s Charter provides additional requirements for Brookhaven including the adoption of the procedures and requirements for the preparation and execution of an annual operating budget and a capital budget, including requirements as to the scope, content, and form of such budgets and programs. The information below provides an outline of the City’s application of those laws as required .

The City’s goal will be to adopt operating budgets where current revenues equal or exceed anticipated expenditures. All departments supported by the resources of this City must function within the limits of the financial resources identified or available specifically to them. A balance must be struck between revenues and expenditures, so that the public can realize the benefits of a strong and stable government. It is important to understand that this policy is applied to budget entities over periods of time which extend beyond current appropriations. By law, budgets cannot exceed available resources, defined as revenues generated in the current period added to balances carried forward from prior years. Temporary shortages, or operating deficits, can and do occur, but they are not tolerated as extended trends.

A. SCOPE

This policy applies to all budgeted funds, which are the responsibility, and under the management of the City of Brookhaven and its Department of Finance.

B. FINANCING CURRENT COSTS

As required by law, current costs shall be financed with current revenues, including the use of authorized fund balances. The City shall strive to avoid short-term borrowing to meet cash flow requirements. However, the City may enter into short-term borrowing should a need arise.

C. BUDGET OBJECTIVE BY TYPE OF FUND

The following budget objectives are established for the different City operating funds below:

1. **General Fund** – The annual budget for the General Fund shall provide for general government operations of the City and maintain working capital necessary for the City’s financial health and stability.

City of Brookhaven, GA

- 2. **Special Revenue Fund(s)** – The City adopts annual budgets for each special revenue fund that demonstrates any legally restricted revenue sources are used consistent with the applicable laws and/or regulations (i.e. Emergency 911 Fund, Impact Fee Fund, etc.).
- 3. **Capital Project Fund(s)** – The City adopts project budgets for each of its capital project funds. These adopted appropriations do not lapse at the end of a fiscal year; rather they remain in effect until project completion or re-appropriation by City Council.
- 4. **Debt Service Fund(s)** – The City adopts annual budgets for its debt service funds. Any remaining fund balances from prior years plus current years projected revenues shall be sufficient to meet all annual debt service requirements.
- 5. **Enterprise Fund(s)** - Although generally accepted accounting principles (GAAP) and Georgia statutes do not require the City to adopt budgets for enterprise funds, the City does adopt budgets for its enterprise funds in order to monitor revenues and control expenses. The City uses a business approach when budgeting enterprise funds. Enterprise funds shall be self-supporting whenever possible and subsidized losses will be minimized when break-even is not possible.

SECTION II. OPERATING BUDGET

The operating budget shall be prepared on an annual basis and include those funds detailed in Section I that are subject to annual appropriation (all funds excluding the Capital Project Funds). Prior year budget appropriations and prior year actual data will be provided as reference data, with the current year appropriation and projection of expenditures. At a minimum, the City shall adopt annual balanced budgets for the general fund, each special revenue fund, and each debt service fund in accordance with O.C.G.A. 36-81-3.

A. DEPARTMENTAL APPROPRIATIONS

The budget shall be developed based upon “line-item” expenditures within each department. This type of budget focuses on categories of expenditures such as personal services, contractual services, supplies, equipment, etc. within each department. At a minimum, each department’s appropriation in each fund shall be detailed within the budget document. (O.C.G.A. 36-81-3 and 36-81-5). Both the departments and the expenditure lines shall be defined as required by law (via HB491 passed in 1997) using the Georgia Department of Community Affairs (DCA) Uniform Chart of Accounts as may be updated from time to time by the DCA.

B. COUNCIL APPROPRIATIONS

City of Brookhaven, GA

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The Mayor and each councilmember shall be provided an annual expense allowance as provided pursuant to the City Charter (SECTION 2.07.) for the reimbursement of expenses actually and necessarily incurred by the Mayor and Council members in carrying out their duties as elected officials of the city. Though purchases of a strictly personal nature are prohibited, the appropriateness of the expense is at the Council members' discretion as long as it does not create a taxable compensation to the Council member.

C. BUDGET PREPARATION CATEGORIES

Each department shall submit budget requests for current services necessary to provide the same level of service for the upcoming year that is currently being provided and expanded services associated with new services, additional personnel or new capital projects/equipment.

C. BALANCED BUDGET

The budget shall be balanced for each budgeted fund. Total anticipated revenues plus that portion of fund balance in excess of total anticipated revenues (see operating budget policy G below) that is designated as a budget-funding source shall equal total estimated expenditures for each fund. Pursuant to the City Charter, the city manager and mayor are required to present to the city council a budget which is balanced in projected spending and revenues.

D. BASIS OF BUDGETING

Neither GAAP nor Georgia statutes address a required budgetary basis of budgeting; however, the City shall adopt budgets in conformity with GAAP for all budgeted funds unless such conformity would create an unrealistic representation of the financial position and activities of the City. All governmental funds shall use the modified accrual basis of accounting and proprietary funds shall use the accrual basis of accounting for budgeting purposes.

E. LEVEL OF BUDGET ADOPTION AND CONTROL

All budgets shall be adopted at the legal level of budgetary control, which is the department level within each individual fund. See policy J below for amending the budget.

F. BUDGET STABILIZATION RESOURCES

The City shall establish a fund balance in all operating funds (listed in Section I.C of this policy) for working capital. The purpose of working capital is to cover the cost of expenditures caused by unforeseen emergencies, cover shortfalls caused by revenue declines, and to eliminate any short-term borrowing for cash flow purposes. This fund balance shall accumulate and then be maintained at an amount, which

City of Brookhaven, GA

represents no less than three (3) months of operating and debt expenditures (approximately one-fourth of annual budgeted expenditures).

G. UTILIZATION OF PRIOR YEAR'S FUND BALANCE IN BUDGET

If necessary, the City may use fund balance for working capital (see budget policy F above) as a funding source for that fund's budget in any given year. The amount of unreserved fund balance shall be estimated conservatively, taking into consideration future year needs. The minimum requirement for working capital, equal to three (3) months of operating and debt expenditures, must first be met before utilizing the excess fund balance as a funding source for the budget except as provided for in policy H below. The utilization of fund balance shall be deemed a use of one-time revenues for budgeting purposes.

H. APPROPRIATION LAPSES AT YEAR END

All operating budget appropriations (including encumbered appropriations) shall lapse at the end of a fiscal year. Purchases encumbered in the current year, but not received until the following year, must be charged against a department's subsequent year appropriation. For projects and other purchases approved, but whose purchase for is not anticipated to occur prior to the fiscal year end, utilization of the budgeted funds may be accounted for in accordance with policy G above.

I. BUDGET CONTROL REPORTS

The City shall maintain a system of budgetary control reports to assure adherence to the budget. The City will prepare and distribute to departments, timely monthly financial reports comparing actual revenues and expenditures with budgeted amounts.

J. AUTHORIZATION OF BUDGET ADJUSTMENTS AND AMENDMENTS

The budget is a dynamic rather than static plan, which requires adjustments and formal budget amendments as circumstances change. The City Council must approve all increases in total departmental appropriations.

Department Heads must submit budget amendment requests transferring appropriations from one line item to another within the specific department appropriation and the fund, other than those prohibited above, and obtain approval by the City Accountant and the City Manager. Adjustments from appropriations that have been obligated, committed, or reserved for a designated purpose shall not be transferred until a formal de-obligation occurs.

Throughout or subsequent to each year, any necessary budgetary appropriations, including budgets for any projects authorized but not funded during the year, may be appropriated through a supplementary budget amendment. Such supplemental

City of Brookhaven, GA

appropriations shall be balanced with additional revenues or reduced expenditures for each fund.

K. CONTINGENCY LINE-ITEM

The City shall establish an appropriated contingency in all operating funds (defined in Section I of this policy) in order to accommodate unexpected operational changes, legislative impacts, or other economic events affecting the City's operations which could not have been reasonably anticipated at the time the budget was prepared. Non-operating funds shall not require a contingency appropriation.

This contingency appropriation will be a separate line item within the budget. This amount shall be subject to annual appropriation. Council approval shall be required for all expenditure requests from the contingency line item(s). However, expenditures from project contingencies described in Section IV(A) shall not require Council approval.

L. CONTRIBUTIONS

Unless authorized by City Council, outside contributions to programs operated by City departments shall be subject to the City's accounting and budgetary policies. The City welcomes both unrestricted and restricted contributions compatible with the City's programs and objectives. Any material contribution or restricted contribution shall be appropriated by City Council prior to expenditure. Material contributions shall be defined as one-time contributions exceeding \$50,000.

M. ADMINISTRATIVE SERVICE FEE/COST ALLOCATION

Whenever possible, the City may assess an administrative service fee from the General Fund to any other fund, based upon documentation and/or an outside independent study. This assessment will be based upon a percentage of the operating revenues, or services provided to the fund and shall be used to reimburse the General Fund for the administrative and support services provided to the assessed fund.

N. ONE-TIME REVENUE SOURCES

To the extent practical, non-recurring revenues shall be utilized within the appropriate fund for items relating to non-recurring expenses to eliminate the fluctuations in funding operations with non-sustainable resources.

SECTION III. CASH FLOW BUDGET

For analysis and internal management purposes, the City shall prepare an annual cash flow budget in conjunction with the Operating Budget. The purpose of this document will be to provide the necessary guidelines to ensure that cash will be available to pay budget costs on a timely basis.

City of Brookhaven, GA

Budget allocations (i.e., budget allotments) are used in the operating budget, when needed to manage cash flows. The annual appropriation may be divided into segments in order to ensure that the projected revenue streams will be adequate to fund the appropriated expenditures. The cash flow budget will provide details as to the periods in which the revenues will be collected, and thereby providing for available resources to pay obligations.

A. APPROPRIATIONS AT YEAR END

Capital project appropriations shall carry forward to the subsequent budget period an equal amount of any encumbrances/purchase orders issued as of the close of the fiscal year. Purchases encumbered in the current year, but not received until the following year, must be charged against each department's subsequent year carry-over appropriation. Any remaining appropriation available by project at year-end must be re-appropriated.

B. CONTINGENCY ACCOUNT

The City shall include an appropriated contingency in the Capital Project Fund in order to accommodate expenditures that may not have been expected during the duration of a capital project. Expenditure of contingency funds shall only be authorized in accordance with the same provisions as provided in policy D of this section. Any contingency budgets shall be subject to annual appropriation.

SECTION IV. SUBMISSION OF THE BUDGETS TO COUNCIL

A. ACTION BY THE CITY MANAGER AND MAYOR TO PRESENT BUDGETS TO COUNCIL

The City Manager must submit all proposed operating and capital budgets to Council by October 15th for the ensuing fiscal year. Prior to submitting the budgets to Council, the budgets will be submitted to the Mayor for input, review, and comment. The submitted budgets will be accompanied by a message from the mayor and city manager containing a statement of the general fiscal policies of the city, the important features of the budget, explanations of major changes recommended for the next fiscal year, a general summary of the budget, and such other comments and information as they may deem pertinent. The operating budget, capital budget, the budget message, and all supporting documents shall be filed in the office of the city manager and shall be open to public inspection.

B. PUBLIC HEARING AND ANNOUNCEMENT

On the date that the proposed budget is submitted to Council for consideration, a copy of the budget shall be placed with the City Clerk's office. Convenient access to the residents during reasonable business hours will be provided as to accord every opportunity to the public to review the budget prior to adoption. A statement

City of Brookhaven, GA

advising the residents of the City of the availability of the proposed budget shall be published in a newspaper of general circulation during the same week it is made available to Council. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

At least one week prior to passage of the budget, Council shall hold a special public hearing at which the budget will be presented and public comment on the budget will be solicited. The date, time and place of the special public hearing shall be announced no less than 30 days prior to the scheduled date for such hearing. At least one week before the budget hearing is held, a notice shall be published in a newspaper of general circulation within the jurisdiction of the City. The statement shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear.

C. PASSAGE OF THE BUDGETS

Council shall adopt a budget by resolution on or before the first day of the fiscal year. If Council fails to adopt the budget by the prescribed deadline, the operating budget and capital budget proposed by the Mayor and City Manager shall be adopted without further action by Council. Any subsequent changes to the budget will be addressed in accordance with amendment procedures previously mentioned.

L-12

MEMORANDUM

AGENDA # ID

L-12

MEETING OF FEBRUARY 12, 2013

DISTRICT/COMMITTEE: Legal Department

ISSUE/AGENDA ITEM TITLE: Franchise Agreement with Georgia Power

BACKGROUND/SUMMARY: This is a Georgia Power Franchise Agreement for payment of franchise fees to the City for use of the City ROW for electrical lines. It's a standard Agreement with a standard fee that they pay to every municipal jurisdiction.

FISCAL IMPACT: (Budgeted – over or under)

STAFF RECOMMENDATION: Passage of Agreement

ATTACHMENTS: Franchise Agreement

L-12

ORDINANCE GRANTING FRANCHISE

To

GEORGIA POWER COMPANY

By

CITY OF BROOKHAVEN

On

_____, 2013

The within franchise accepted on

_____, 2013.

GEORGIA POWER COMPANY

By: _____
President

L12

ORDINANCE GRANTING PERMISSION AND CONSENT to Georgia Power Company, a Georgia corporation, and its successors, lessees, and assigns (hereinafter referred to collectively as the "Company") to occupy the streets and public places of the City of Brookhaven, Georgia, a municipality and political subdivision of the State of Georgia (hereinafter referred to as the "City"), in constructing, maintaining, operating, and extending poles, lines, cables, equipment, and other apparatus for transmitting and distributing electricity and for other purposes.

SECTION I. Be it ordained by the governing authority of the City that the authority, right, permission, and consent are hereby granted to the Company, for a period of thirty-five (35) years from the date of the Company's acceptance hereof, to occupy and use the streets, alleys, and public places of the City within the present and future corporate limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation, and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections, and other apparatus (hereinafter referred to collectively as the "Company's Facilities") for the business and purpose of transmitting, conveying, conducting, using, supplying, and distributing electricity for light, heat, power, and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys, and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to insure safe and efficient service.

SECTION II. Be it further ordained that the rights, permission, and consents herein contained are granted for the following considerations and upon the following terms and conditions:

1. The Company shall pay into the treasury of the City (a) on or before the first day of March in each year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following the granting of this franchise and ending on December 31 thereafter and (b) on or before the first day of March of each year thereafter during the term of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to customers served under residential, commercial, and industrial rate schedules (as so prescribed) within the corporate limits of the City during the preceding calendar year, on condition that in the event the City shall grant to any other entity the right to use and occupy the City's streets for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof.

2. The amount, if any, of any tax, fee, charge, or imposition of any kind required, demanded, or exacted by the City on any account, other than ad valorem taxes on property, shall operate to reduce to that extent the amount due from the percentage of gross sales provided for in paragraph 1 of this Section II.

3. The Company shall fully protect, indemnify, and save harmless the City from all damages to persons or property caused by the construction, maintenance, operation, or extension of the Company's Facilities, or conditions of streets, alleys, or public places resulting therefrom, for which the City would otherwise be liable.

L-12

4. The Company shall, in constructing, maintaining, operating, and extending the Company's Facilities, submit and be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.

5. For purposes of paragraph 6 of this Section II, the term "Distribution Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of this ordinance) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following: (i) electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines"); (ii) poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures"); (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures; (iv) lines, wires, cables, or conductors installed in concrete-encased ductwork; or (v) network underground facilities.

6. In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this paragraph 6 shall apply without regard to whether the Company has acquired, or claims to have acquired, an easement or other property right with respect to such Distribution Facilities and shall not affect the amounts paid or to be paid to the City under the provisions of paragraph 1 of this Section II. Notwithstanding the foregoing provisions of this paragraph 6, the Company shall not be obligated to relocate, at its expense, any of the following: (i) Distribution Facilities that are located on private property at the time relocation is requested or demanded; (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

7. The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to, (i) both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).

8. With regard to each streetscape project undertaken by or on behalf of the City, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's Facilities

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(whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project. For each streetscape project, the Company shall estimate in good faith the amount of incremental base revenue, if any, that the Company will realize as a result of new customer load or expansion of existing customer load attributable to such project; and such estimate shall be based on tariffs in effect at the time that construction of such project begins and shall not include fuel recovery charges, non-electric service billings, or taxes. If such estimate indicates that the Company will realize incremental base revenue, the Company shall do one of the following, whichever results in greater cost savings to the City: (i) reduce the City's advance payment to the Company for relocation costs by ten percent (10%); or (ii) where the City has developed a bona fide marketing plan within twelve (12) months after construction of such project begins, either refund the amount of the Company's incremental base revenue during such twelve-month period to the City or credit such amount against any future payment due from the City to the Company. The City and the Company acknowledge and agree that the amount of any refund or credit calculated pursuant to clause (ii) of the foregoing sentence of this paragraph 8 shall not exceed the amount of the City's advance payment to the Company for relocation costs associated with such project.

SECTION III. Be it further ordained that nothing contained in this ordinance shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

SECTION IV. Be it further ordained that from time to time after the approval of this ordinance, the Company and the City may enter into such additional agreements as the Company and the City deem reasonable and appropriate; provided, however, that such agreements shall not be inconsistent with the terms and conditions of the franchise granted in this ordinance, shall not extend beyond the term of the franchise, and shall be enforceable separate and apart from the franchise.

SECTION V. Be it further ordained that the Company shall, within ninety (90) days from the approval of this ordinance, file the Company's written acceptance of the franchise granted in this ordinance with the Clerk of the City, so as to form a contract between the Company and the City.

SECTION VI. Be it further ordained that upon such acceptance all laws and ordinances, and all agreements between the Company and the City with respect to the Company's use of the City's streets, alleys, and public places, in actual conflict herewith be and the same shall thereupon stand repealed and terminated, respectively.

Adopted by the City Council of the City of Brookhaven, Georgia, at a meeting held on

_____, 2013.

Approved: _____, 2013.

Mayor

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I, _____, Clerk of the City of Brookhaven, Georgia, hereby certify that I was present at the meeting of the City Council of the City of Brookhaven, Georgia, held on _____, 2013, which meeting was duly and legally called and held, and at which a quorum was present, and that an ordinance, a true and correct copy of which I hereby certify the foregoing to be, was duly passed and adopted by the City Council of the City of Brookhaven, Georgia, at said meeting.

IN WITNESS WHEREOF, I hereunto set my hand and the corporate seal of the City of Brookhaven, County of DeKalb, State of Georgia, this _____ day of _____, 2013.

Clerk



MEMORANDUM

AGENDA # ID _____

L 14

MEETING OF: February 12, 2013

DISTRICT/COMMITTEE: N/A

ISSUE/AGENDA ITEM TITLE: Commission & Board regular 2013 meeting schedule

BACKGROUND/SUMMARY: A schedule of dates and application deadlines for the regular 2013 meetings of both the Planning Commission and the Zoning Board of Appeals.

FISCAL IMPACT: (Budgeted - over or under) N/A

STAFF RECOMMENDATION: Staff recommends the Mayor and City Council adopt the attached schedule of regular monthly meetings of the Planning Commission and Zoning Board of Appeals.

ATTACHMENTS: Staff memo, schedule of regular meetings.

L
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Complete & Adjoining		Adjoining												
Application Deadline	Compliant Letter	Amendment Deadline	Ad Sent to Paper	Sign to Printer	Ad Runs	Sent	Letters	Sign Posted	PC Packet	Meeting	PC	M-CC 1st Read	M-CC Packet	M-CC Meeting
January	01/02/13	01/16/13	02/01/13	02/07/13	02/12/13	02/14/13	02/18/13	02/19/13	02/27/13	03/06/13	03/12/13	03/12/13	03/14/13	03/26/13
February	02/06/13	02/13/13	03/01/13	03/07/13	03/12/13	03/14/13	03/18/13	03/19/13	03/27/13	04/03/13	04/09/13	04/09/13	04/11/13	04/23/13
March	03/06/13	03/13/13	03/29/13	04/04/13	04/09/13	04/11/13	04/15/13	04/16/13	04/24/13	05/01/13	05/14/13	05/14/13	05/16/13	05/28/13
April	04/03/13	04/17/13	05/03/13	05/09/13	05/14/13	05/16/13	05/20/13	05/21/13	05/29/13	06/05/13	06/11/13	06/11/13	TBD	06/25/13
May	05/01/13	05/15/13	05/31/13	06/06/13	06/11/13	06/13/13	06/17/13	06/18/13	06/26/13	07/03/13	07/09/13	07/09/13	07/11/13	07/23/13
June	06/05/13	06/19/13	07/05/13	07/11/13	07/16/13	07/18/13	07/22/13	07/23/13	07/31/13	08/07/13	08/13/13	08/13/13	08/15/13	08/27/13
July	07/03/13	07/17/13	08/02/13	08/08/13	08/13/13	08/15/13	08/19/13	08/20/13	08/28/13	09/04/13	09/10/13	09/10/13	09/12/13	09/24/13
August	08/07/13	08/14/13	08/30/13	09/05/13	09/10/13	09/12/13	09/16/13	09/17/13	09/25/13	10/02/13	10/08/13	10/08/13	10/10/13	10/22/13
September	09/04/13	09/18/13	10/04/13	10/10/13	10/15/13	10/17/13	10/21/13	10/22/13	10/30/13	11/06/13	11/12/13	11/12/13	11/14/13	11/26/13
October	10/02/13	10/16/13	11/01/13	11/07/13	11/12/13	11/14/13	11/18/13	11/19/13	11/27/13	12/04/13	12/10/13	12/10/13	TBD	12/24/13
November	11/06/13	11/13/13	11/27/13	12/05/13	12/10/13	12/12/13	12/16/13	12/17/13	12/26/13	TBD	01/14/14	01/14/14	01/16/14	01/28/13
December	12/04/13	12/11/13	12/27/13	01/02/14	01/14/13	01/09/14	01/20/14	01/21/14	01/29/13	02/05/14	02/11/14	02/11/14	02/13/14	02/25/14

Memorandum

To: Marie Garrett
CC: None
From: JD Clockadale
Date: 2/7/2013
Re: Municipal Court Start-Up & Ongoing Costs (excluding non-interpreter court staffing, education and training, office supplies, utilities, lease payments and repairs and maintenance)

BACKGROUND/SUMMARY:

The lease for the Municipal Court space has been approved by Council and signed by Mayor Davis.

Municipal Court requires additional equipment and services to begin and sustain court operations. The areas of need are the following:

- Construction
- Furniture-Fixtures-Equipment (FFE)
- Court Processes
- IT
- Financial (e.g. safes and handling of monies)
- Security

FISCAL IMPACT:

Table 1: Summation of Municipal Court Cost Related to Start-up and Operations*

Item	Cost
Construction Related	\$30,300
FFE	\$20,404
Court Processes	\$27,100
IT Related	\$48,849
Financial	\$10,469
Security	\$65,042
Total	\$202,164

*A detailed cost breakdown is provided in the "Cost Summary" section below. All costs are for 2013 only.

STAFF RECOMMENDATION:

Staff is recommending approval of all vendors, outlined in the “VENDOR & COST SUMMARY” below, with the expectation that staff will actively pursue process efficiencies and product and service cost savings to further reduce costs where possible.

Where required by the City’s purchasing policy or deemed prudent for cost reductions, three (3) bids/quotes were obtained for products and/or services.

The factors taken into consideration for this recommendation are the following:

- Price
- Availability and/or lead time of product or service
- Benchmarking of sister municipalities
- Ability to meet requirements of equipping and operating Municipal Court
- Input from Municipal Court vendor and City staff experienced in Municipal Court operations

VENDOR & COST SUMMARY:

Construction Related

Item	Vendor Recommendation (if applicable)	Description	Cost
Construction	Warren Hanks Construction Company	Court construction including demolition, build-out, electrical, painting, carpeting and contractor supervision and overhead.	\$28,000.00* (not-to-exceed amount)
Permitting Fees	N/A	For DeKalb County Fire Marshall only. Community Development Department will handle other permitting.	Fee included in amount above
Architectural Fees	John Heard Architects, Inc.	This amount has been previously approved by City Manager.	\$2,300.00*
		Total	\$30,300

*Expense previously approved

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FFE

Item	Vendor Recommendation (if applicable)	Description	Cost
Furniture	Office Furniture Expo	All furniture related to courtroom, back-office and staff (including Judge and Solicitor) including delivery and install. Includes podium.	\$5,799.75
Table Skirts	Staples	Six (6) Table skirts for folding tables that compose dias.	\$83.94 (\$13.99 ea)
Computer Carts	Office Depot	Three (3) mobile computer stations were requested	\$419.97 (\$139.99 ea)
PA System	AV Tech	Small PA System, three (3) mics/stands/cables	\$1,020.84
Dias Riser/Deck	Stage Right	384 Sq feet riser deck with supports, hard closure panels and transport system plus shipping/handling.	\$8,132.00
Misc. Equipment / Supplies	Various	Money tills, locked deposit bags, GA Criminal and Traffic Law Manuel, Code of Ordinances, digital voice recorder, electronic calculators, money light, and office supplies. (estimate) US and GA flags and stands, stanchions, and various interior and exterior signage (plastic yard sign type)	\$3,000.00
Postage Machine	Pitney Bowes	Pitney Bowes DM300C. \$177/month for 60 months. Assume 11 months remaining in year after start of Municipal Court.	\$1,947.00
		Total	\$20,404

City of Brookhaven
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Court Processes

Item	Vendor Recommendation (if applicable)	Description	Cost
Citation/Ticket Books	Pro Solutions	For use by DeKalb Police and Brookhaven PD in the future. Citations will have applicable City of Brookhaven information. There are 25 tickets per book and DeKalb PD North Precinct has asked for 200 ticket books to accommodate the approximately 100 officers that are able to write citations within the City limits. Cost for initial order is \$250. We will have to order additional books as the year progresses. The cost for 400 additional ticket books is \$200.	\$450.00
Code Compliance Citations	Pro Solutions	For use by Community Development Department for Code Compliance.	\$400.00
Probation Services	JCS	Probation services are provided at no cost to City. Offenders incur related costs (\$35-\$45/mo.) JCL currently services Sandy Springs and Alpharetta. Jacobs staff is currently working with JCS and is satisfied with their performance. Using the same company during transition, increases the likelihood of a smooth start-up with the COB Court. Other vendors include: <ol style="list-style-type: none"> 1. PPS – Professional Probation Services (Doraville, Chamblee, Norcross, and Decatur.) 2. Sentinel Offender Services (Dunwoody) 	\$0.00
Interpretation Services	Gabriel Roeda or Ramuél Martinez	1) Includes 1 certified Spanish speaking interpreter during regular court hours. Rate is \$50 per hour* plus mileage at \$.55 per mile. Regular court hours are Tuesdays and Fridays every week from 1-5pm. <ul style="list-style-type: none"> • <i>Hourly Cost:</i> Assume \$500 per week max for actual interpretation and 45 weeks of court operation in 2013. 	1) \$24,975.00 (includes mileage cost of \$2,475) plus

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		<ul style="list-style-type: none"> • <i>Mileage Cost:</i> Assume \$55 per week for 100 miles <p>2) Includes 1 certified Spanish speaking interpreter during bench trial hours. Rate is \$50 per hour* plus mileage at \$.55 per mile. Bench trial occurs once every 2 months from 1-5pm.</p> <ul style="list-style-type: none"> • <i>Hourly Cost:</i> Assume \$200 per week max for actual interpretation during each bench trial court session and 5 bench trial court sessions for 2013. • <i>Mileage Cost:</i> Assume \$55 per week for 100 miles <p><u>*Notes:</u></p> <ul style="list-style-type: none"> • Additional languages qualify as specialty languages and hourly rate depends upon language requested. • Minimum time required is 2 hours. 	<p>2) \$1,275.00 (includes mileage cost of \$275)</p>
		Total	\$27,100

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IT Related

Item	Vendor Recommendation (if applicable)	Description	Cost
Software	Syscon	First year cost includes \$900 per month starting in March 2013 and \$2,000 for setup/installation and 16 hours of online training. <u>Additional training online training is \$87.50 per hour.</u> Assume 11 months of Municipal Court operation in 2013.	\$12,600.00 (includes 8 hours of addtl online training)
Building Cabling	Wiring Concepts	Cat5e wiring for the building	\$1950.39
Laptop	Dell	One laptop was not accounted for during the initial order.	\$1140.00
Phones	CDW-G	Polycom SoundPoint IP 560G	\$1337.65
Copier	Milner	Multifunction copier lease. <ul style="list-style-type: none"> • \$230 per month lease @11 months • \$.006 per page printed/copied. Will allow for \$1,500 in printing expenses 	\$4,030.00
Printers	Milner	Three (3) Desktop Printers	\$750.00
Network Switch	InterDev	Enterasys 24 port PoE 1GB Layer 3 network switch	\$3520.00
Firewall and access points	CDW-G	Firewall and wireless access points.	\$2840.75
UPS	CDW-G	CyberPower UPS	\$309.29
CCTV (Video surveillance)	IronSky	Indoor, fixed, 720p video cameras. Price includes installation of cameras, aiming and focusing, installation of camera station software on client provided PC. Price also includes one year of support.	\$8,703.79 (includes estimated computer cost)
Analog Phone lines Day 1	ATT	To have analog phone lines day one for the fax machine and security system we need to have AT&T install the lines. \$250 installation and \$136 per month plus taxes. Assume 11 months of Municipal Court operation in 2013.	\$1,749.00
Scanners	CDW-G	Scanners will be used to scan in paper citations written by DeKalb PD and the City's Code Compliance team. 2 scanners to start at \$463.52 per scanner.	\$927.04
Internet Service	CBeyond	10.5Mbps 5 public IPs, 5 analog lines, MPLS back to City Hall. \$765.72 per month. Assume 9 months of a permanent internet solution in 2013.	\$6,891.48
Interim Internet Service	OneRing	Antennae. \$500 installation and \$800 per month. Assume 2 months of interim service prior to permanent internet solution. This is necessary to allow for connectivity prior to full internet service installation.	\$2,100.00
Total			\$48,849

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Financial

Item	Vendor Recommendation (if applicable)	Description	Cost
Smartsafe	JP Morgan Chase / Loomis	This is the cost of the safe PLUS the weekly pickup fee by the armored courier. \$476 per month. <u>This item has already been approved by City Manager.</u> Courier services are included. Assume 11 months of Municipal Court operation in 2013.	\$5,236.00
Standard safe	SentrySafe	SentrySafe Security Safe 4.3 cu ft (for money tills). <u>This item has already been approved by City Manager.</u>	650.00
Merchant services		Finance & Administration is still working through merchant services. In the interim, we will use the "square" iPhone application (same technology utilized to start collecting revenue on Jan 18). Assume the following: <ul style="list-style-type: none"> • 25% of all revenue paid via credit card • Projected City revenue from Municipal Court is \$800,000 • Assume 10 months of actual revenue collection 	\$4,583.00
Courier Services	JP Morgan Chase/Loomis	These services are included in smartsafe cost.	Included in smartsafe cost
Total			\$10,469

Brookhaven

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Security

Item	Vendor Recommendation (if applicable)	Description	Cost
Off-Duty Police Officers	DeKalb PD	<p>1) Includes three (3) uniformed officers per lease. One for parking, one for courtroom security and one for bailiff services before, during and after court hours. Rate is \$35 per hour and 36 hours/per week of total of uniformed officer presence. Assume 45 weeks of court operation.</p> <p>2) Includes three (3) uniformed officers per lease. One for parking, one for courtroom security and one for bailiff services before, during and after bench trial court. This occurs once every 2 months. Rate is \$35 per hour and 18 hours per bench trial court of total uniformed officer presence. Assume 5 sessions of bench trial court in 2013.</p>	<p>1) \$56,700</p> <p style="text-align: center;">plus</p> <p>2) \$3,150.00</p>
Alarm System	EMC Security	<p>Includes standard monitoring, "panic" button for emergencies and camera system. \$930.76 installation.</p> <p>Monthly cost with Alarmnet cellular service and remote internet access is \$30.95.</p> <p>Monthly cost without cellular/remote access is \$16.95.</p>	\$1,271.76
Walkthrough Metal Detector	Garrett Magnascanner	<p>Model CS 5000. www.garrett.com . Includes delivery, assembly, calibration and training.</p> <p>This unit is used by the City of Dunwoody Municipal Court.</p>	\$3,760.00
Wand Metal Detector	Super Scanner Garrett Metal Detector PN 1165190	<p>www.garrett.com (972) 494-6151</p> <p>This unit is used by the City of Dunwoody Municipal Court</p> <p>Originally designed for use at the Olympic Games in 1984, Garrett's <i>Super Scanner</i> is the most recognized hand-held metal detector in the world.</p>	\$160.00
Total			\$65,042

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**RECORDERS COURT OF DEKALB COUNTY
SCHEDULE OF FINES AND FEES**

EFFECTIVE APRIL 2011

L 19
Resolution
will be
submitted by
Legal

The fine schedule below shows a fine typical for a first offense in this Court. Added to all fines are fees imposed in all courts across the state. These state surcharges are added to the Court's base fines and were enacted into law by your local state legislators over the years. These fees include payments added for the Peace Officer and Prosecutor Training fund (A), 10%; Peace Officer Training Fund (B), 10%, Local Victim Assistant Program Fund, 5%; Driver Education and Training Fund, 5%; etc.

For any person who within the past 3 years has had prior traffic offenses in the Recorders Court of DeKalb County, and additional \$50.00 will be added to the base fine. For anyone who is charged with a moving violation which resulted in a motor vehicle wreck, \$100.00 will be added to the base fine.

O.C.G.A	OFFENSE	FINE + FEES
40-1-3	Unlawful operation of vehicle	388.00
40-1-4	Lewd or profane signs on vehicle	388.00
REGISTRATION And LICENSING		
40-2-5	Use of Plate to Conceal or Misrepresent	710.00
40-2-6	Altered Plate	710.00
40-2-8(a)	Failure of New Resident to Register in 30 Days	150.00
40-2-8(b)(1)	Driving Without Numbered License Plate	150.00
40-2-8(b)(1)	Driving Without Current Revalidation Sticker (No Tag)	150.00
40-2-8(b)(2)	Failure to Register New Vehicle in 30 Days	150.00
40-2-8(c)	Failure to Display County Decal	45.00 (1 st Offense) 150.00 (2 nd Offense)
40-2-8.1	Failing to put Revalidation Sticker on Tag	45.00
40-2-20	No Tag on Vehicle	150.00

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O.C.G.A	OFFENSE	FINE + FEES
40-2-38	Improper Use of Dealer Plate	318.00
40-2-41	Driving with No License Plate Displayed	150.00
40-2-41	Driving with Obstructed License Plate	150.00
40-2-42	Improper Transfer of License Plate or Decal	150.00
40-5-20(a)	Driving Without a Drivers License	710.00 (1 st Offense) 1360.00 (2 nd & 3 rd Offense)
40-5-20(a)	New Resident 30 Days to Get License	150.00
40-5-20(a)	Wrong Class License	150.00
40-5-20(b)	Operating W/O License While Being Towed	150.00
40-5-20(c)	Possession of More than One License	430.00
40-5-23	Wrong Class License	150.00
40-5-24(b)(2)(A)	Class D Restriction Violation (12:00 am to 6:00 a.m.)	150.00
40-5-29(a)	No License on Person	24.00
40-5-33	Failure to Change Name or Address in 60 Days	94.00
40-5-64	Violation of Limited Permits	840.00
40-5-65	Possession of Out of State License While Suspended in GA	710.00 (1 st Offense) 1360.00 (2 nd Offense)
40-5-120(1)	Possession of or Displaying Revoked or Suspended Lic. (MANDATORY COURT)	710.00 (1 st Offense) 1360.00 (2 nd Offense)
40-5-121(a)	Driving While Lic. Suspended or Revoked (MANDATORY COURT)	900.00 (1 st Offense) 1360.00 (2 nd Offense)
40-5-75(f)	Driving W/Lic. Suspended or Revoked for VGCSA or DUI w/Drugs Conviction (MANDATORY COURT)	1030.00 (1 st Offense) 1360.00 (2 nd offense)
40-5-122	Permitting Unlic. Person to Drive	290.00
40-5-123	Permitting Unlic. Child Under 18 to Drive	290.00
40-5-125	Improper Use of License	710.00

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O.C.G.A	OFFENSE	FINE + FEES
UNIFORM RULES OF THE ROAD		
40-6-2	Failure to Obey Police Officer/Fireman/Crossing Guard Directing Traffic	178.00
40-6-14(a)	Sound Limits from Vehicle	178.00
40-6-15(a)	Suspended/Revoked/Cancelled Registration (MANDATORY COURT)	840.00 (1 st Offense) 1360.00 (2 nd Offense)
40-6-16	Approaching Stationary Emergency Vehicle	710.00
40-6-20(a)	Violation of Traffic Control Device	178.00 318.00 (Accident)
40-6-23(1)	Violation of Flashing Red or Yellow Light	178.00 318.00 (Accident)
40-6-24	Violation of Lane Direction Control Signal	178.00 318.00 (Accident)
40-6-26(b)	Driving on Road Closed to Public	178.00 318.00 (Accident)
40-6-40(a)	Failure to Maintain Lane	178.00 318.00 (Accident)
40-6-40(b)	Failure to Stay in Right Lane When Driving at Less than Speed Limit	178.00 318.00 (Accident)
40-6-40(d)	Impeding Normal Flow of Traffic	178.00 318.00 (Accident)
40-6-42(1)	Improper Passing	178.00 318.00 (Accident)
40-6-42(2)	Increasing Speed While Being Passed	178.00 318.00 (Accident)
40-6-43(b)	Improper Passing on Shoulder of Road	178.00 318.00 (Accident)
40-6-44	Improper Passing w/in 200 Feet of On-coming Traffic	178.00 318.00 (Accident)
40-6-45(a)(1)	Passing On Hill or Curve (U-21 MANDATORY COURT ¹)	290.00 430.00 (Accident)
40-6-45(a)	Passing w/in 500 Feet of Intersection/RR or Bridge	290.00 430.00 (Accident)
40-6-46(b)	Passing on Solid Yellow Line	178.00 318.00 (Accident)
40-6-47(b)	Wrong Way on One-Way Street	178.00 318.00 (Accident)

¹ Suspendable Offense for Under 21 Drivers

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O.C.G.A	OFFENSE	FINE + FEES
40-6-48(1)	Weaving on Roadway	178.00 318.00 (Accident)
40-6-49 (a)	Following Too Closely	178.00 318.00 (Accident)
40-6-50(b)	Crossing Median on Divided Highway	178.00 318.00 (Accident)
40-6-50(b)	Improper Crossing of Gore	178.00 318.00 (Accident)
40-6-51	Driving Into of Off of Controlled Access Roadway Except at Entrance or Exit	178.00 318.00 (Accident)
40-6-54	HOV Lane Violation	
	1 st	75.00
	2 nd	100.00
	3 rd	150.00
40-7-70(a)	Failing to Yield Right of Way at Intersection to Vehicle Approaching from Opposite Direction	178.00 318.00 (Accident)
40-6-71	Failing to Yield While Turning Left	178.00 318.00 (Accident)
40-6-72(b)	Failure to Stop for Stop Sign	178.00 318.00 (Accident)
40-6-72(c)	Failure to Stop or Yield at Yield Sign	178.00 318.00 (Accident)
40-6-73	Failure to Yield from Driveway, Parking Lot, Alley	178.00 318.00 (Accident)
40-6-74(a)	Failure to Yield to Emergency Vehicle Travelling with Lights and Siren	178.00 318.00 (Accident)
40-6-75(a)	Failure to Yield to Highway Maintenance Workers in Marked Construction/Maintenance Zone	178.00 318.00 (Accident)
40-6-75(b)	Failure to Yield to Maintenance Vehicle Displaying Amber Lights	178.00 318.00 (Accident)
40-6-76	Failure to Yield to Funeral Procession	178.00 318.00 (Accident)
40-6-90(a)	Pedestrian Failing to Obey Officer or Traffic Control Device	178.00 318.00 (Accident)
40-6-91(a)	Driver Failing to Yield to Pedestrian	178.00 318.00 (Accident)
40-6-91(b)	Pedestrian Darting into Traffic	178.00 318.00 (Accident)
40-6-91(d)	Passing Vehicle Stopped to Give Pedestrian Right of Way at Intersection	178.00 318.00 (Accident)

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O.C.G.A	OFFENSE	FINE + FEES
40-6-92(d)	Pedestrian Crossing Highway Diagonally	178.00 318.00 (Accident)
40-6-93	Failure of Driver to Exercise Due Care for Pedestrians on any Roadway	178.00 318.00 (Accident)
40-6-94	Failure to Yield for Blind Pedestrian	178.00 318.00 (Accident)
40-6-95	Pedestrian Under the Influence of Alcohol or Drugs	290.00
40-6-96(b)	Pedestrian Failing to Walk on Shoulder /No Sidewalk	178.00 318.00 (Accident)
40-6-96(b)	Pedestrian Failing to Walk Facing Traffic on Two Lane Road	178.00 318.00 (Accident)
40-6-96(d)	Pedestrian Failing to Yield Right of Way to Vehicles	178.00 318.00 (Accident)
40-6-96(f)	Pedestrian Failing to Stop for RR Crossing Barrier	290.00
40-6-97	Pedestrian Hitch-hiking	178.00 318.00 (Accident)
40-6-98	Driving Through Safety Zone	178.00 318.00 (Accident)
40-6-99(a)	Pedestrian Failing to Yield to Emergency Vehicle	178.00 318.00 (Accident)
40-6-120(a)(1)	Improper Right Turn	178.00 318.00 (Accident)
40-6-120(a)(2)	Improper Left Turn	178.00 318.00 (Accident)
40-6-120(b)	Failure to Obey Temporary Traffic Control Device	178.00 318.00 (Accident)
40-6-121(1) or (2) or (3)	Improper U-Turn on Grade, Curve or Unsafe Manner	178.00 318.00 (Accident)
40-6-121 (4)	U-Turn Prohibited (Posted)	178.00 318.00 (Accident)
40-6-122	Improper Start of Parked Vehicle	178.00 318.00 (Accident)
40-6-123(a)	Improper Turn	178.00 318.00 (Accident)
40-6-123(b) or (c) or (d)	Improper Use of Signal Lights	178.00 318.00 (Accident)
40-6-124(a)	Failure to Use Proper Signals	178.00 318.00 (Accident)

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O.C.G.A	OFFENSE	FINE + FEES
40-6-125	Improper Use of Hand Signals	178.00 318.00 (Accident)
40-6-126	Improper Use of Center Lane	178.00 318.00 (Accident)
40-6-140(a)	Failure to Stop for Approaching Train	290.00 430.00
40-6-140(b)	Failure to Stop for RR Barriers	290.00 430.00
40-6-140(f)	Stopping on RR Tracks	
	-Tractor Trailers 10 plus wheels	1360.00 1490.00
	-Vehicles less than 10 wheels	430.00 570.00
40-6-141	Failure to Stop for RR Crossing	290.00 430.00
40-6-142	Failure of Taxi, School Bus or Gas Truck to Stop at RR Crossing	290.00
40-6-144	Failure to Stop Before Emerging from Alley or Driveway on Residential or Business Street	178.00 318.00
40-6-163(a)	Failure to Yield for School Bus Loading or Unloading	430.00 570.00
40-6-180	Too Fast For Conditions	178.00 318.00
40-6-181, 40-6-188	SPEEDING 1-10 MPH OVER THE LIMIT	
	First	45.00
	Second	108.00
	School Zone	185.00
	Work Zone	199.00
40-6-181, 40-6-188	SPEEDING 11-14 MPH OVER THE LIMIT	
	First	122.00
	Second	150.00
	School Zone	262.00
	Work Zone	276.00

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O.C.G.A	OFFENSE	FINE + FEES
40-6-181, 40-6-188	SPEEDING 15-18 MPH OVER THE LIMIT	
	First	192.00
	Second	220.00
	School Zone	332.00
	Work Zone	346.00
40-6-181, 40-6-188	SPEEDING 19-23 MPH OVER THE LIMIT	
	First	262.00
	Second	332.00
	School Zone	402.00
	Work Zone	416.00
40-6-181, 40-6-188	SPEEDING 24-29 MPH OVER THE LIMIT (U-21 MANDATORY COURT)	
	First	388.00
	Second	458.00
	School Zone	528.00
	Work Zone	556.00
40-6-181, 40-6-188	SPEEDING 30-33 MPH OVER THE SPEED LIMIT	
	MANDATORY COURT ALL DEFENDANTS	
	SPEEDING 30-33	
	First	458.00
	Second	528.00
	School Zone	598.00
	Work Zone	612.00
40-6-181, 40-6-188	SPEEDING 34+ MPH OVER THE SPEED LIMIT	
	MANDATORY COURT FOR ALL DEFENDANTS	
	Fines in Discretion of the Court	
	First – up to \$1,000.00 no less than \$350.00	
	Second – up to \$1,000 no less than \$400.00	
	School Zone – up to \$1,000 no less than \$450.00	
	Work Zone – up to 1,000 no less than \$460.00	
40-6-184(a)	Impeding Flow of Traffic	178.00

O.C.G.A	OFFENSE	FINE + FEES
40-6-186(b)	Racing on Highway (MANDATORY COURT)	710.00 1035.00 (Accident)
40-6-201	Leaving Vehicle Unattended While Engine Running	178.00
40-6-202	Stopping, Standing or Parking Outside Business or Residential District	45.00
40-6-203(a)(2)	Parking in Fire Lane	150.00
40-6-203(a)(1)and (a)(2)	Stopping, Standing, Parking Where Prohibited	45.00
40-6-205	Obstructing Intersection	178.00
40-6-226	Parking In Handicapped Space	360.00 (1 st Offense) 710.00 (2 nd Offense)
40-6-240(a)	Improper Backing	178.00 318.00 (Accident)
40-6-240(b)	Improper Backing on Shoulder or Controlled Access Highway	178.00 318.00 (Accident)
40-6-241	Due Care-Cell Phone, CB Radio, Stereo System	178.00 318.00 (Accident)
40-6-241.1	Texting while driving	150.00
40-6-242(a)	Operating Vehicle W/more than 3 Passengers in Front Seat and Loaded so as to Obscure Drivers View or Interfere W/Ability to Control Vehicle	178.00 318.00 (Accident)
40-6-243	Opening Vehicle Doors so as to Interfere W/Traffic	178.00 318.00 (Accident)
40-6-244	Riding in House Trailer	178.00 318.00 (Accident)
40-6-246	Coasting	178.00 318.00 (Accident)
40-6-247	Following Emergency Vehicle	178.00 318.00 (Accident)
40-6-248	Crossing Over Fire Hose	360.00
40-6-249	Littering on Highways	220.00
40-6-250	Wearing Device While Driving Which Impairs Sight or Hearing	150.00
40-6-251(a)	Laying Drags Causing Vehicle to Zig-Zag or Spin (MANDATORY COURT)	430.00 710.00 (Accident)

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O.C.G.A	OFFENSE	FINE + FEES
40-6-252	Parking or Driving Through "No Through Zone" 1 st 2 nd 3 rd	80.00 150.00 220.00
40-6-253	Open Container Alcohol	290.00
40-6-254	Failure to Secure Load MANDATORY COURT WITH ACCIDENT	150.00 710.00 (Accident)
40-6-270	Failure to Stop at or Return to Scene of Accident with Death, Injury or Damage 1 st 2 nd 3 rd (MANDATORY COURT)	840.00 1360.00 1360.00
40-6-270(a)(1)-(a)(3)	Failure to Render Aid/Provide Information at Scene of Accident (MANDATORY COURT)	840.00
40-6-271	Failure to Perform Duty on Striking Unattended Vehicle (MANDATORY COURT)	458.00
40-6-272	Failure to Perform Duty on Striking Fixed Object	318.00
40-6-273	Duty to Report Accident Resulting in Injury/Death/Property Damage more than 500.00 (MANDATORY COURT)	458.00
40-6-275	Duty of Driver to Move Vehicle From Road	178.00
MOTORCYCLES		
40-6-310	Traffic Lanes Available to Motorcycles	234.00
40-6-311(c)	Driver Can Not Carry Item which Prevents Hands on Handlebars	234.00
40-6-311(d)	Passenger Can Not Interfere with Control or View of Driver	234.00
40-6-311(e)	Passenger and Driver Must Wear Shoes on Motorcycle	234.00

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O.C.G.A	OFFENSE	FINE + FEES
40-6-312(a)	Drivers of Vehicles Must Give Motorcycle Full Lane	234.00
40-6-312(b)	Motorcycle Can Not Pass in Same Lane as Another Vehicle	234.00
40-6-312(c)	Driving Motorcycle Between Lanes or Vehicles Prohibited	234.00
40-6-312(d)	More Than Two Motorcycles Abreast in Same Lane Prohibited	234.00
40-6-312(e)	Failure to Have Headlight and Taillight Illuminated	234.00
40-6-313	Motorcycle Clinging to Other Vehicles	388.00
40-6-314(a)	Carrying Passenger W/Out Footrest	234.00
40-6-314(b)	Handlebars More than 15" Above Seat	234.00
40-6-315(a)	Riding Motorcycle With no Helmet	388.00
40-6-315(b)	No Windshield/Visor on Motorcycle	234.00
SERIOUS OFFENSES		
40-6-390(a)	Reckless Driving (MANDATORY COURT)	710.00 1035.00 Accident
40-6-395(a)	Fleeing or Attempting to Elude (MANDATORY COURT) 1 st 2 nd 3 rd	1035.00 1360.00 1360.00
40-6-395(c)(1)	Impersonating Officer by Using Vehicle Resembling Law Enforcement Vehicle	1360.00
40-6-395(c)(2)	Impersonating Officer in Order to Stop/Direct/Control Traffic	1360.00
40-6-397	Aggressive Driving	

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O.C.G.A	OFFENSE	FINE + FEES
	1 st	1035.00
	2 nd	1360.00
	3 rd	1360.00
EQUIPMENT VIOLATIONS		
40-8-3	Driving Vehicle with Vehicle or Load Dragging on Road	220.00 430.00 (Accident)
40-8-4(a)	Failure to Display Triangle on Slow Moving Vehicle	108.00
40-8-4	Slow Moving Vehicle Must Have Triangle on Rear	108.00
40-8-6(b)	Operating Vehicle W/Altered Suspension	150.00
40-8-7	Improper Equipment	150.00
40-8-8	Speedometer Not Working	150.00
40-8-20	No Headlights When Required	150.00
40-8-23	Improper Taillights	150.00
40-8-23(d)	Tag Light Required	150.00
40-8-24	No Reflectors	150.00
40-8-25	No Brake Lights	150.00
40-8-26	No Operation of Brake Lights	150.00
40-8-27	Failure to Flag or Light Projecting Load	150.00
40-8-28	Failure to Have Lights on Parked Vehicle When Not Visible 500 Feet on Street or Highway	150.00
40-8-29	Improper Lights-More Than One Spotlight or Two Foglights	150.00
40-8-31	Failure to Dim Headlights	150.00
40-8-50	Operating Vehicle or Motorcycle W/Improper or No Brakes	220.00 360.00

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O.C.G.A	OFFENSE	FINE + FEES
40-8-70(a)	No Horn/Improper Use of Horn	150.00
40-8-70(b)	Horn/Bell/Siren/Whistles on Unauthorized Vehicle	220.00
40-8-71	Improper Exhaust	150.00
40-8-72	No Mirror	150.00
40-8-73	No Wipers or Improper Windshield	150.00
40-8-73.1	Window Tint Violation	150.00
40-8-74	Unsafe Tires/Tread on Vehicle	150.00
40-8-76	Child Restraint Violation Under 6 years old 1 st 2 nd	55.00 105.00
40-8-76.1(e)(3)	Failure to Use Seatbelt for Minor-Over Six under 18 years old	30.00
40-8-76.1(e)(2)	No Seatbelt	15.00
40-8-77	Defective Shock Absorbers	150.00
40-8-79	Restrictions on Riding in Back of Truck	150.00
40-8-80	Operating Unauthorized Vehicle with Flashing Blue Lights (MANDATORY COURT)	710.00
40-8-92	Operating Emergency Vehicle W/No or Expired Emergency Light Permit	150.00

L19

O.C.G.A	OFFENSE	FINE + FEES
40-8-84	Unauthorized Use of Siren/Whistles/Bells	150.00
EMISSIONS		
40-8-181	Visible Emissions	150.00
40-8-130	Altered or Removed Emission Control Device	150.00
INSURANCE		
40-6-10(a)(1)	Failure to Maintain Minimum Insurance (MANDATORY COURT)	
	1 ST	500.00
	2 ND	970.00
	3 RD	1360.00
40-6-10(a)	Failure to Show Proof of Insurance (Had Insurance at Time of Ticket)	45.00
40-6-11(b)	Failure to Maintain Insurance for Motorcycle	
	1 st	500.00
	2 nd	970.00
	3 rd	1360.00
40-6-10(b)	Knowingly Operating or Allowing Another to Operate Vehicle W/Out Insurance	
	1 st	500.00
	2 nd	970.00
	3 rd	1360.00
40-6-10(c)	False Certification or Statement of Insurance	
	1 st	500.00
	2 nd	970.00
MOPEDS/BICYCLES		

L19

O.C.G.A	OFFENSE	FINE + FEES
40-6-351	License Required for Moped	150.00
40-6-352	Helmet Required for Moped Operation	150.00
40-6-350	Traffic Laws Apply to Mopeds	150.00
40-6-291	Traffic Laws Apply to Bicycles on Roadway	150.00
40-6-292(a)	No Riding on Handlebars	150.00
40-6-293	No Clinging to Vehicles on Highway(Cyclist/Skaters)	150.00
40-6-294(a)	Bicycles Ridden on Right Side of Road	150.00
40-6-294(b)	No More Than 2 Bicycles Abreast	150.00
40-6-296	Bicycle Lights Required	150.00
COMMERCIAL VEHICLES		
40-5-146	No CDL/Suspended CDL/Disqualified/Wrong Class CDL (MANDATORY COURT)	710.00
40-7-26	Commercial Driver In Possession of Alcohol (MANDATORY COURT)	500.00
40-5-146(b) or 46-7-39	Violation of Out of Service Order	710.00
40-8-2, 40-8-7	Unsafe Commercial Vehicle	500.00
46-7-39	No Medical Certificate/Invalid Medical Certificate	290.00
46-7-39	Failure to Correct Safety Defects	290.00
46-7-39	No Annual Inspection	290.00
46-7-39	Failure to Use Reflective Triangles	290.00
46-7-39	Failure to Use Seatbelt	220.00
46-7-39	Use or Possession of Radar Detector	290.00
46-7-39 or 40-6-254	Unsecured Load MANDATORY COURT WITH MVA	220.00 710.00 (Accident)

L 19

O.C.G.A	OFFENSE	FINE + FEES
46-7-39	Log Book/Hours of Service	290.00
46-7-39	Record of Duty Status Violation	290.00
40-8-27 and 32-6- 24(b)(1)(C)	No Light or Flag on Projecting Load	220.00
40-8-27	No DOT Number/Identification	290.00
40-6-51	Restricted Lane Violation	430.00
40-6-52	Restricted Highway Violation	430.00
VGCSA/SHOPLIFT/ALCOHOL VIOLS.		
16-13-02(b) Additional Fees: +50% Drug Treatment +25.00 State Probation	Possession of Less than Ounce of Marijuana (MANDATORY COURT) 1 st 2 nd 3 rd	 795.00 905.00 1500.00
16-8-14	Shoplifting (MANDATORY COURT)	570.00
3-3-23(a)	Furnishing Alcohol to Person U-21 (MANDATORY COURT)	710.00
3-3-23(a)(2)	Purchase or Attempt to Purchase Alcohol by Person U-21 (MANDATORY COURT)	710.00
3-3-23(a)(2)	Possession of Alcohol by Person U-21	710.00
3-3-23(a)(4)	Misrepresentation of Age to Obtain Alcohol	710.00
3-3-23(a)(5)	False ID or Misrepresentation of Age	710.00
3-3-23(a)(6)	No Person Shall Have a Place Where U-21 is Allowed to Drink or Possess Alcoholic Beverage	1360.00

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VIOLATIONS OF THE DEKALB COUNTY CODE OF ORDINANCES

CODE SECTION	OFFENSE	FINE + FEES
16-3	Selling or soliciting on public right of way/food or beverage	\$220.00
16-27	Evasion of Marta fare	\$94.00
16-29	Littering on public or private property	\$150.00
16-42	Public Intoxication	\$360.00
16-43	Loitering	\$150.00
16-44	Permitting minor to loiter	\$220.00
16-45.1	Loitering for purpose of soliciting or procuring others to engage in sex for hire	\$360.00
16-45.2	Loitering for drug related purposes	\$710.00
16-51	Defecating or urinating in public	\$360.00
16-52	False Police alarms	\$360.00
16-54	False representation of age	\$220.00
16-55	Unauthorized persons may not enter schools	\$220.00
16-56	Unauthorized persons remaining in school after having been directed to leave	\$360.00
16-58	Disorderly Conduct	\$360.00
16-60	Public Indecency	\$360.00
16-61	Exposure of genitals and nudity prohibited in public	\$360.00

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CODE SECTION	OFFENSE	FINE + FEES
16-66	Unlawful possession of knives	\$220.00
16-67	Reckless operation of motor vehicle in parking area or walkway	\$220.00
16-68	Creating Hazardous or Physically Offensive Condition	\$360.00
16-69	Open container of alcohol	\$150.00
16-91	Soliciting or begging on county property	\$94.00
ANIMAL CONTROL		
5-2 (a), (b), (c)	General responsibility	\$220.00
5-3	Keeping animal under restraint	\$220.00
5-4	Keeping animal under restraint off premises of owner	\$220.00
5-5	Animal at large	\$360.00
5-6	Animal abandonment	\$360.00
5-7	Neglect of animal	\$360.00
5-8	Animal cruelty	\$430.00
5-10	Dangerous Animal	\$570.00
5-14	Transporting Animals	\$185.00
5-15	Hazardous animals to be constrained or confined	\$185.00
5-16	Guard dog notice	\$220.00
5-18	Rabies tag required, rabies vaccination required	\$220.00