

Chapter 1 - GENERAL PROVISIONS

Sec. 1-1. - How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated, the "Code of City of Brookhaven" and may be so cited.

Sec. 1-2. - Definitions and rules of construction.

The following definitions and rules of construction shall apply to all ordinances and resolutions of the City Council unless the context requires otherwise:

Generally. The ordinary signification shall be applied to all words, except words of art, or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such trade, or with reference to such subject matter. In all interpretations the courts shall look diligently for the intention of the City Council, keeping in view, at all times, the old law, the evil, and the remedy. Grammatical errors shall not vitiate, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands.

Liberal construction; minimum requirements; overlapping provisions. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the City Council may be fully carried out. In the interpretation and application of any provision of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of this Code imposes greater restrictions upon the subject matter than the other provisions of this Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

Adequate. The word "adequate" means equal to what is required, suitable to the case or occasion, fully sufficient, proportionate, satisfactory.

Aforesaid. The word "aforesaid" usually means next before, unless the context requires a different signification.

All. The word "all" means everyone, or the whole number of particulars.

Also. The word "also" means "in like manner," "likewise," "in addition," "besides," "as well," "further," "too."

As soon as possible. The term "as soon as possible" means within a reasonable time, having due regard to all the circumstances.

At. The term "at" may mean "in," "near," "within," or "about." Its primary idea is nearness, and it is less definite than "in" or "on."

City. The term "City" means the City of Brookhaven Georgia.

City Council. The term "City Council" means the City Council of the City of Brookhaven, Georgia.

Code. The term "Code" means the Code of Ordinances of the City of Brookhaven.

Computation of time. When a number of days is prescribed for the exercise of any privilege, or the discharge of any duty, only the first or last day shall be counted. If the last day shall fall on Saturday or Sunday, the party having such privilege or duty shall have through the following Monday to exercise such privilege or to discharge the duty. When the last day prescribed for such action shall fall on a public or

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legal holiday as set forth in state law, the party having such privilege or duty shall have through the following business day to exercise such privilege or to discharge the duty. When the period of time prescribed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

Council. The word "council" means the four Council members and the Mayor.

Council Member. The words "Council Member" refers to the individual members of the City Council, including the Mayor.

Delegation of authority. Whenever a provision appears requiring a city officer or city employee to do some act, it is to be construed to authorize the officer or employee to designate, delegate and authorize subordinates to perform the required act.

Department. The word "department" means an administrative department of city government. When appropriate, "department" means the director of the department or the director's designee.

Director. The word "director" refers to the director of an administrative department or the director's designee. The term is synonymous with department head.

Finance department, department of finance. The terms "finance department" and "department of finance" are synonymous.

Finance director, director of finance. The terms "finance director" and "director of finance" are synonymous.

Following. The word "following" means next after.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Joint authority. A joint authority given to any number of persons, or officers, may be executed by a majority of them, unless it is otherwise declared.

Keeper and proprietor. The words "keeper" and "proprietor" mean and include persons, whether acting by themselves or as a servant, agent or employee.

May. The word "may" is to be construed as being permissive.

Month. The word "month" means a calendar month.

Must. The word "must" is to be construed as being mandatory.

Number. The singular and plural number include the other, unless expressly excluded.

Oath. An "oath" includes an affirmation.

Officials, employees, boards, commissions, etc. Whenever reference is made to officials, employees, boards, commissions or other agencies of the city by title only, the reference refers to the officials, employees, boards, commissions or other agencies of the city.

Or, and. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership or joint tenant of the whole or of a part of the building or land.

Person. The word "person" includes any association, club, society, firm, corporation, partnership and body politic and corporate as well as an individual.

Personal property. The term "personal property" includes every species of property except real property, as defined in this section.

Preceding. The word "preceding" means next before.

Property. The term "property" includes real and personal property.

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Public place. The term "public place" includes any place that the public is invited or permitted to go or congregate.

Real property. The words "real property" include lands, tenements and hereditaments.

Shall. The word "shall" is to be construed as being mandatory.

Sidewalk. The word "sidewalk" means any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription. A "signature" or "subscription" includes the mark of an illiterate or infirm person.

State. The word "state" means the State of Georgia.

Street or road. The word "street" or "road" includes any street, avenue, boulevard, road, alley, lane, viaduct and any other public highway in the city, including, but not limited to, the paved or improved surfaces thereof.

Tenant, occupant. The word "tenant" or "occupant," applied to a building or land, includes any person holding a written or oral lease of, or who occupies, the whole or a part of a building or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Until a certain day. The term "until a certain day" includes all of such day.

Week. The word "week" means seven (7) days.

Whereas. The term "whereas" means "considering that."

Will. The word "will" is to be construed as being mandatory.

Writing. The term "writing" includes printing and all numerals.

Year. The term "year" means a calendar year.

Sec. 1-3. - Prohibition of sexist connotations.

It is the intent of the City Council that all city ordinances and resolutions shall be interpreted in an equal and nondiscriminatory manner to persons of both the male and female sexes. In furtherance of that intent, any term or phrase having a sexist connotation which may be contained in any existing city ordinance or resolution shall be interpreted and applied in a sex-neutral manner. Future amendments and revisions to city resolutions and ordinances shall likewise be written, interpreted and applied in a sex-neutral manner.

Sec. 1-4. - Catchlines of sections, effect of history notes, and references in Code.

- (a) The catchlines of the several sections of this Code in boldface type are intended as mere catchwords to indicate the contents of the sections and shall not be deemed or taken to be titles of such sections, nor as any part of such sections, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted.
- (b) The history or source notes appearing in parentheses after sections in this Code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this Code or which otherwise appear in footnote form are provided for the convenience of the user of this Code and have no legal effect.

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- (c) All references to chapters, articles or sections are to the chapters, articles and sections of this Code unless otherwise specified.

Sec. 1-5. - Territorial applicability.

Except as specifically provided otherwise, this Code only applies in the incorporated areas of the City of Brookhaven.

Sec. 1-6. - Effect of repeal of ordinance.

- (a) The repeal of an ordinance does not revive any ordinance in force before or at the time the ordinance repealed took effect.
- (b) The repeal of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal for an offense committed under the repealed ordinance.

Sec. 1-7. - Amendments; effect of new ordinances; amendatory language.

- (a) All ordinances adopted subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances and resolutions, such repealed portions may be excluded from the Code by omission from repealed pages affected thereby. The subsequent ordinances and resolutions as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances and resolutions until such time that this Code and subsequent ordinances numbered or omitted are readopted anew by the City Council.
- (b) Amendments to any of the provisions of this Code may be made by amending such provisions by specific reference to the section number of this Code in the following language: "Section _____ of _____, is amended to read as follows:" The new provisions may then be set out in full as desired.
- (c) If a new section not heretofore existing in the Code is to be added, the following language may be used: "The _____ is amended by adding a section (or article or chapter) numbered _____ to read as follows:" The new section may then be set out in full as desired.
- (d) All sections, articles, chapters or provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be.

Sec. 1-8. - Supplementation of Code.

- (a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the City Council or its designee. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.
- (b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

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- (c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplemental, insofar as it is necessary to do so to embody them into a unified code. For example, the person may:
 - (1) Organize the ordinance material into appropriate subdivisions;
 - (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;
 - (3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
 - (4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and
 - (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code.
- (d) In no case shall the person make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-9. - Severability.

It is hereby declared to be the intention of the board of commissioners that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code, since the same would have been enacted by the City Council without the incorporation in this Code of any such unconstitutional phrase, clause, sentence, paragraph or section.

Sec. 1-10. - General penalty; continuing violations.

- (a) In this section "violation of this Code" means:
 - (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance;
 - (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance; or
 - (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.
- (b) In this section "violation of this Code" does not include the failure of a city officer or city employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section.
- (c) Violations of this Code shall be handled as follows:
 - (1) If a summons, citation or accusation is personally served upon an accused, a fine not exceeding one thousand dollars (\$1,000.00), or imprisonment in jail not to exceed one hundred twenty (120) days, or a combination thereof may be imposed. Any fine imposed shall be subject to immediate execution.

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- (2) The judge may probate [prorate] any part or all of any fine or jail time imposed pursuant to this section.
 - (3) For violation of a pretreatment standard or requirement adopted pursuant to the Federal Clean Water Act, the maximum fine shall be one thousand dollars (\$1,000.00) per day for each violation by an industrial user.
 - (4) With respect to violations of this Code that are continuous with respect to time, each day the violation continues is a separate offense. Notwithstanding the foregoing, attorneys shall not be punished under this section for failure to comply with [chapter 15](#) of this Code.
- (d) **(Effective January 1, 2013)** The imposition of a fine pursuant to this section does not prevent revocation or suspension of any city issued registration, business occupation tax certificate, license, permit or franchise. So long as a fine remains unpaid and outstanding, and not the subject of any appeal, an application for any city issued registration, business occupation tax certificate, license, permit, franchise, variance, sketch plat, amendment to the comprehensive plan land use map, amendment to the official zoning map, rezoning, special administrative permit, or special land use permit may not be accepted by any city employee or issued by any city employee, official, board, commission or other city or county entity if such application relates to the person who owes the fine as reflected in the Municipal court records or the land on which the violation(s) has been shown to exist.
- (e) Violations of this Code that are continuous with respect to time may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent equitable relief.

Sec. 1-11. – Reserved.

Sec. 1-12. - Matters not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect:

- (1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code.
- (2) Any ordinance promising or guaranteeing the payment of money for the city, or authorizing the issuance of any bonds for the city, or any evidence of the city's indebtedness, or any contract or obligation assumed by the city.
- (3) Any right or franchise granted by the city to any person.
- (4) Any ordinance dedicating, naming, defining, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the city.
- (5) Any appropriation or ordinance authorizing appropriations or gifts.
- (6) Any legislation providing for local improvements or assessing taxes therefor.
- (7) Any ordinance dedicating or accepting a plat or subdivision.
- (8) Any ordinance rezoning property.
- (9) Any ordinance establishing salaries or compensation of city officers or employees not in this Code.
- (10) Any ordinance approving the budget.
- (11) Any ordinance adopted for purposes that have been consummated.
- (12) Any ordinance that is temporary, although general in nature.

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- (13) Any ordinance that is special, although permanent in nature.
- (14) Any ordinance levying or otherwise relating to taxes.
- (15) Any ordinance amending any act enacted by the General Assembly of the state.

Sec. 1-13. - Code does not affect prior offenses, rights, etc.

- (a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.
- (b) The adoption of this Code shall not be interpreted as authorizing or permitting any use or the continuance of any use of a structure or premises in violation of any ordinance in effect on the date of adoption of this Code.

Sec. 1-14 – Transition Period

During the period of transition and start up of the City of Brookhaven, any duties required by this Chapter to be fulfilled by an employee or officer of the City who has not been appointed or such position or agency not yet established shall be fulfilled by the City Manager or the City Manager's designee.

Sec.s 1-15 – 1-200 : RESERVED