

## Chapter 2 - ADMINISTRATION <sup>[2]</sup>

### Article 1: General Provisions

#### 2-1 : Meetings

(a) *Meeting Times.* As described in Section 2.09 of the Charter, the Council shall meet at least once a month.

(b) *Meetings scheduled on a Federal or State Holiday.* If the regular meeting falls on a Federal or State holiday, the Council may reschedule the meeting and publish the time change as described in subsection (a) of this section.

(c) *Special Meetings.* Special meetings may be called in accordance with the Charter provision 2.09.

(d) Any meeting of the Council may be continued or adjourned from day to day, or for more than 1 day, but no adjournment shall be for a longer period than until the next regular meeting thereafter.

#### 2-2 : Open Meetings and Records

(a) All meetings shall be held in accordance with the Georgia Open and Public Meetings Act codified at O.C.G.A. § 50-14-1 et seq.

(b) All City records subject to the Georgia Open Records Act, codified at O.C.G.A. 50-18-70 et seq, shall be available to the public. The City Clerk shall comply with any valid requests under the Georgia Open Records Act and prepare any materials requested.

#### 2-3 : Document Retention

Pursuant to the Georgia Records Act, O.C.G.A. § 50-18-90 et seq, the City of Brookhaven adopts the records management plan and record retention schedules recommended by the Georgia Secretary of State as amended from time to time by future resolutions of the Mayor and Council of the City of Brookhaven. The City Clerk shall coordinate all records management for the City including storage, archiving, and destruction of records. Records shall be maintained according to approved retention schedules. All requests made under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq, excepting standardized routine requests of the City of Brookhaven Police Department, the City of Brookhaven Fire Department, and the City of Brookhaven Municipal Court shall be made to the City Clerk. No record shall be destroyed except as provided in the approved retention schedule; provided, however, a written record may be destroyed if it is otherwise preserved by means of microfiche, scanning, or other reliable photographic or digital means as permitted by law. Changes to the retention schedules shall be adopted by resolution of the Mayor and Council.

#### 2-4 : Fees

The City Clerk shall charge the full amount permitted by Georgia law to copy the records subject to the Georgia Open Records Act. If compilation and replication of such documents takes more than 15 minutes, the City Clerk may charge an additional reasonable administrative charge.

#### 2-5 : Subpoenas

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(a) The Council, when sitting as a judicial or quasi-judicial body pursuant to public law, its charter, or its ordinances, shall compel the attendance of witnesses by subpoena under the same rules as prevail in the superior courts, and any witness who shall fail to respond to the subpoena, or who shall refuse to testify under oath, shall be guilty of contempt.

(b) The subpoenas as authorized in the preceding section shall bear witness in the name of the Mayor; shall be issued by the City Clerk; and shall be served by the Chief of Police, any police officer, or by such other person as the Mayor may designate.

(c) Should any person fail to respond to a subpoena of the Council, after having been lawfully served, without good cause, or should the person refuse to testify under oath, then the Council shall hold the person in contempt, and, in their discretion, punish the person by the imposition of a fine according to the maximum allowed by state law. Each of the failures or refusals herein described shall constitute a separate contempt.

**2-6 : Reimbursement and Travel**

(a) The Mayor and Council Members shall be reimbursed for their own reasonable travel expenses incurred in connection with City business related to travel outside the City, and those Cities that share borders with the City.

(b) Overnight Travel. The City shall reimburse the Mayor or Council members for actual expenses of meals incurred in connection with overnight travel, lodging, ground transportation and incidental expenses incurred in connection with City business.

(c) Expense Reports. Within 60 days after incurring the aforementioned expenditure(s), the Mayor or Council Members shall file with the City Manager a signed travel expense form setting forth the reasonable expenses incurred for which City payment is sought. Original receipts documenting each expense over \$10.00 must accompany the form, except for reasonable and customary out-of-pocket expenses such as tolls, valet services, gratuities, and mileage. If a travel expense form has not been filed within 60 days after incurring an expenditure, the City shall not reimburse such expenses.

(d) Notwithstanding any provision to the contrary, no expenses shall be reimbursed that exceeds the maximum expense amount allowed by the Charter.

**Sec.s 2-7 – 2-10 : RESERVED**

**Article 2: Personnel**

**2-11 : Personnel Manual**

The City Manager shall establish a personnel manual for all municipal employees. In addition to sections deemed necessary by the City Manager, the manual shall include policies regarding equal employment opportunity, nondiscrimination, and sexual harassment. The manual will be updated from time to time as required by federal and state laws.

**2-12 : Employees**

(a) In general, municipal employees shall be categorized as full time, part time or by terms decided by contract with the City.

(b) Municipal Employees. Full-time employees will be paid an hourly salary, weekly salary or some other pay rate; part-time employees will work at irregular intervals on a short-term basis, and temporary workers will be hired to fill a temporary need for a specified period of time.

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(c) Contract Employees. The City Manager shall have the authority to propose contractual employment relationships between the City and third parties. The terms of these third party contracts will be established by the contract at the time of hiring. The Council must approve a contract worth more than \$25,000.00. Issues of liability and scope of agency are to be defined by the contract.

**2-13 : Job Descriptions**

The City shall maintain a job specification for each position held by a Municipal Employee. The City may provide a job specification for contracted positions. Such specification shall describe the duties of the position, the qualifications necessary, licenses required, to whom such employee reports, expected salary range, and such other information as is necessary to recruit for such position effectively. Such specifications may be amended from time to time by the City Manager.

**2-14 : Benefits**

It shall be the policy of the City of Brookhaven to attract and retain a qualified workforce through the provision of a comprehensive package of benefits. To that end, the City shall be authorized to contract with benefits providers for the purpose of providing insurance, retirement, pension plans and other benefits deemed necessary by the Council upon approval of the benefit program by the City Council. Eligibility for benefits and the cost to employees shall be specified in the Personnel Manual.

**2-15 : Records**

The City shall keep such records and make such reports as may be required by applicable state or federal laws or regulations.

**Sec.s 2-16 – 2-20 : RESERVED**

**Article 3: City Departments**

**2-21 : Authorization**

The following departments may be established by the Council:

- (a) Administration
- (b) Finance
- (c) Community Development
- (d) Transportation
- (e) Public Works
- (f) Police
- (g) Fire & EMS
- (h) Parks and Recreation
- (i) Building

One or more department may be combined to form one or more multifunctional departments.

**2-22 : Right of Contract**

The City may contract with third parties to provide all or portions of the functions of any municipal department.

**2-23 : Oversight**

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(a) There shall be a director of each department or agency who shall be its principal officer. Each director shall, subject to the direction and supervision of the City Manager, be responsible for the administration and direction of the affairs and operations of the director's department or agency.

**Sec.s 2-24 – 2-29 : RESERVED**

**Article 4: City Boards and Commissions**

**2-31 : Creation**

There may be created a Board of Zoning Appeals, a Design Review Board, a Historic Preservation Board, a Planning Commission, a Construction Board of Appeals, and an Alcohol Licensing and Appeals Board, which shall have the powers and duties and be subject to and governed by the regulations set forth in this Article and this Code. The duties of each Board are defined in the corresponding City Code section.

**2-32 : Composition**

All Board members must be appointed by the Mayor and approved by the Council.

**2-33 : Membership**

(a) The Council shall determine by Resolution the number of members of each Board or Commission. Except as provided in subsection (b) below, the Council shall establish qualifications for members of each Board. Each Board member shall be nominated by the Mayor and approved by the Council. The Council shall determine if and at what amount Board members will be compensated.

(b) Except as otherwise provided herein, each Board or Commission member must be a resident of the City of Brookhaven. Should the Board member move out of the City; he or she may remain active until the Mayor and Council appoint his or her replacement.

(c) Members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the Board.

**2-34 : Terms**

(a) Each member shall serve a specified term of not more than 4 years. Consecutive terms are permissible, and terms may be staggered. Each member, but the Mayor and Council members that may serve on a Board, shall have equal terms of an amount to be specified by the Mayor.

(b) The Mayor and Council members may serve as ex-officio members without a vote on a Board or Commission so long as they remain elected to office. A former Council member or former Mayor may serve on a Board.

(c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.

(d) Any member may be removed for cause by the Mayor and a majority of the Council.

**2-35 : Quorum**

A majority of actual Board members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

**2-36 : Procedure**

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(a) Each of the Boards shall adopt its rules of procedure, which shall be substantially similar to the Rules of Procedures of the City Council, and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of Mayor and Council.

(b) Each of the Boards shall elect, annually, at its first meeting of the calendar year, one of its members to serve as Chair, and one to serve as Vice Chair. Each Board or Commission shall also appoint a Secretary to serve as the official record keeper for the Board or Commission. The Secretary of the Planning Commission may be the Director of Community Development or his designee.

(c) All meetings at which official action is taken shall be open to the public and all records maintained by the Committee shall be public records unless expressly excepted by a provision of the Georgia Open Records Act. The Boards shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the City Clerk. Copies of the minutes shall be sent to the Mayor and each member of the Council. The minutes of the meetings shall be a public record. This section shall not be construed as prohibiting closed sessions when permitted by the Georgia Open Meetings and Open Records Acts.

**2-37 : Training**

The Council may establish a mandatory training program for Board members.

**2-38 : Additional Guidelines of the Planning Commission**

- (a) Any vacancy in the membership shall be filled in the same manner as the original appointment.
- (b) The Planning Commission may receive reimbursement for customary expenses incurred in conjunction with any authorized activity of the Planning Commission.
- (c) The Planning Commission shall meet monthly in accordance with an established schedule of meetings as prepared by the Brookhaven Department of Community Development.
- (d) It shall be the function and duty of the Planning Commission to review and make recommendation(s) for action by the Mayor and City Council on the following:
  - i. All applications for annexation, rezoning, master plans, concurrent ordinances and/or variances;
  - ii. Applications for use permits and modifications to same;
  - iii. Amendments to the text of the Brookhaven Zoning Ordinance, Brookhaven Subdivision Regulations, the Brookhaven Comprehensive Plan, the Future Land Use Map, and the Zoning Map.
  - iv. Perform other functions of the Planning Commission as may be required by Federal and State law.

Nothing contained herein shall prevent the Mayor and City Council from hereafter assigning other duties to the Planning Commission.

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- (e) Any application that is to be considered by the Planning Commission must be submitted to the Department of Community Development in accordance with the established filing schedule as prepared by said department or as stated in the Brookhaven Zoning Ordinance.
- (f) At the close of each public hearing, the Chair of the Planning Commission shall call the members to order for consideration and a vote on the issue currently before them. The vote of the Planning Commission shall be nonbinding and shall be made in the form of a recommendation to the Mayor and City Council from the following list:
  - 1. Approval as recommended by staff with recommended conditions;
  - 2. Approval as recommended by staff with revised conditions as presented by the Planning Commission;
  - 3. Denial.
- (g) The Planning Commission may move to table an item for a specified period of time in order to receive additional information necessary to make a recommendation to the Mayor and City Council. Should a request to table an item be made by the applicant and/or the property owner, the Planning Commission shall consider the request and if granted shall not table said request longer than for a period of ninety (90) days. The 90-day period shall begin on the same day the action is made by the Planning Commission. If the tabled item is not returned within the prescribed period, the item shall then be automatically withdrawn and shall be required to follow the prescribed and established procedure to re-file applications before the Planning Commission.

**2-39 : Additional Guidelines of the Design Review Board**

If created by Resolution of City Council, the Brookhaven Design Review Board shall consist of residents, land owners, business owners and professional architects and/or land planners, who either maintain primary residences and/or businesses or own land in the City. The Design Review Board shall review all plans for development in the City for compliance with standards delineated by the Community Guidelines as established in the City of Brookhaven Zoning Resolution or other ordinance of City Council, and shall make recommendations to the Department of Community Development prior to the approval of a Concept Plan, Land Disturbance Permit, Building Permit, or Sign Permit.

**Sec.s 2-40 – 2-49 RESERVED**

**Article 5: City Advisory Committees**

**2-51 : Authorization**

The Mayor may establish Advisory Committees. Each Committee may have one or more Council members. The Mayor is an ex-officio member of every Committee. The City Manager or a designee shall oversee the meetings of each Committee and is an ex-officio, non-voting, member of each.

**2-52 : Duties**

(a) Each Committee may, from time to time, propose policies and ordinances to the Council in the subjects germane to the Committee.

(b) This section shall not be interpreted to require Committee approval for a measure to be heard before the Council.

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(c) Members must attend two-thirds of meetings in a calendar year. Failure to do so warrants removal from the Committee.

**2-53 : Membership**

(a) Except as provided in subsection (b) below, the Mayor shall establish qualifications for members of each Committee. Each committeeperson shall be nominated by the Mayor and approved by the Council.

(b) Each Committee member must be either a resident of the City of Brookhaven or an owner or officer of a business domiciled in the City of Brookhaven. Should the Committee member move out of the City or no longer be an owner or an officer or a business domiciled in the City of Brookhaven, he or she may remain active until the Mayor and Council appoint his or her replacement.

**2-54 : Terms**

(a) Each Committee member shall serve a specified term of not more than 4 years. Consecutive terms are permissible. Each Committee member, but the Mayor and Council members serving thereon, shall have staggered terms of an amount to be specified by the Mayor.

(b) The Mayor and Council members on each Committee shall serve on that Committee so long as they remain elected to office. A former Council member or former Mayor may serve on a Committee, but such person shall not take the place of the elected member.

(c) Members filling vacancies shall serve the remainder of the term to which they were appointed. A consecutive appointment is permissible.

(d) Any member may be removed with or without cause by the Mayor.

**2-55 : Compensation**

Committee members may serve without compensation. Reasonable expenses for travel may be reimbursed and committee members may be compensated pursuant to a policy to be established by the City Manager and approved by the Council.

**2-56 : Quorum**

A majority of actual Committee members establishes a quorum. Any action taken requires a majority of affirmative votes of the quorum present.

**2-57 : Procedure**

(a) Each of the Committees shall adopt its rules of procedure, which shall be substantially similar to the Rules of Procedure of the City Council, and determine its time of meetings. The date and time of each meeting as well as agenda items to be considered shall be publicized in the same manner as meetings of the Mayor and Council.

(b) All meetings at which official action is taken shall be open to the public and all records maintained by the Committee shall be public records unless expressly excepted by a provision of the Georgia Open Records Act. The Committees shall keep minutes of their formal proceedings, showing the vote of each member upon each question; and records of their examinations and other official actions, all of which shall be filed in the office of the City Clerk. Copies of the minutes shall be sent to the Mayor and each member of the City Council. The minutes of the meetings shall be a public record. This section shall not

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be construed as prohibiting closed sessions when permitted by the Georgia Open Meetings and Open Records Acts.

(c) Expenditures of the Committees, if any, shall be within the amounts appropriated for the purpose intended by the Mayor and Council during the annual budgeting process.

**2-58 : Training**

The Mayor may establish a mandatory training program for Committee members.

**Sec.s 2-59 – 2-60 : RESERVED**

**Article 6: City Finances**

**2-61 : Fiscal Year**

The fiscal year of the City shall be set by Ordinance of the City Council.

**2-62 : Finance Director**

(a) The functions of the City Accountant and City Treasurer shall be performed by the Finance Director or his/her designee within the Finance Department under the direction of the Finance Director.

(b) The Finance Director shall perform at least the following duties:

(1) Managing, planning, directing, and maintaining the city's financial operations, including serving as chair of the city finance department, if such a department is established;

(2) Directing and supervising the work of personnel involved in performing the accounting, utility billing, property tax, payroll, and purchasing functions for the city;

(3) Providing technical leadership in budgeting, overseeing, and directing investment opportunities and debt administration, as well as ensuring proper record retention policies are strictly followed;

(4) The council may require the finance director to perform other duties.

(c) The City may contract with a third party to serve as Finance Director.

**2-63 : City Tax Collector**

(a) The Mayor shall nominate a City Tax Collector, subject to ratification by the Council. The City Tax Collector also may serve as the City Treasurer, City Accountant, and City Finance Director.

(b) The City may contract with a third party, including the Tax commissioner of DeKalb County, Georgia, to serve as City Tax Collector.

(c) The City Tax Collector shall perform at least the following duties. The Mayor and Council may require the City Tax Collector to perform other duties:

(i) Managing, planning, and directing the collection of all City taxes.



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- (ii) Notifying delinquent taxpayers of their status in accordance with Georgia law.

**2-64 : Audits**

(a) The City Council shall appoint an internal auditor to audit the financial records and expenditures of city funds and to report the results of such audits in writing to the city council at times and intervals set by the city council but no less than quarterly. Such audit reports shall, at a minimum, identify all city expenditures and other financial matters that the internal auditor either determines are not in compliance with or cannot conclusively be determined to be in compliance with (a) the provisions of the charter, (b) the applicable city budget, and (c) applicable ordinances, resolutions, or other actions duly adopted or approved by the City council.

(b) The City Council shall appoint an auditor to perform an annual independent audit of all city accounts, funds, and financial transactions by a certified public accountant selected by the city council. The audit shall be conducted according to generally accepted accounting principles. Any audit of any funds by the state or federal government may be accepted as satisfying the requirements of this charter. Copies of all audit reports shall be available at printing cost to the public. As a minimum, all audits and budgets of the city shall satisfy the requirements of Chapter 81 of Title 36 of the O.C.G.A. relating to local government audits and budgets.

**2-65 : Interest Assessed under Code**

Unless specifically provided otherwise, all interest assessed under the provisions of this Code shall be at an annual rate of twelve (12) percent per annum. Where penalties are specified, such penalties shall be assessed, in addition to specified interest charges, at the rate of ten (10) percent of the amount due for failure to file, negligence or disregard of rules or regulations; an additional penalty of twenty-five (25) percent of the amount due shall be assessed for any fraud or intent to evade.

**Sec.s 2-66 – 2-70 : RESERVED**

**Article 7: Purchasing**

**2-71 : Definitions**

When used in this Article, the following words, terms, and phrases, and their derivations shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Any terms not defined by this Article shall have the meaning ascribed to them elsewhere in this Code.

(a) *City Finance Director* means the City Accountant, his agent, or the Chair of the City Finance Department, if such a department is created, or is in existence.

(b) *Construction* means the process of building, altering, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. The term “Construction” does not include the routine operation, repair and/or maintenance of existing structures, building, or real property.

(c) *Contract* means any City agreement, regardless of form or title, for the procurement or disposition of goods, commodities, and services.

(d) *Employee* means an individual drawing a salary or wage from the City whether on a full-time or part-time basis. The term shall encompass all members of the Governing Authority without regard to whether or not such individual is compensated.

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- (e) *Gifts or Favors* means any thing or any service of value.
- (f) *Goods or Commodities* means supplies, apparatus, materials, equipment, and other forms of tangible personal property.
- (g) *Governing Authority* means the City entity responsible for the contract.
- (h) *Ordinance* means this Article.
- (i) *Purchase Order* means the document used by the City to obtain supplies, goods, commodities and services from vendors.
- (j) *Purchasing Agent* means the principal purchasing official of the City pursuant to Section 2 of this Article.

**2-72 : Purchasing Agent**

- (a) The Mayor may appoint the City Manager or his agent to serve as the Purchasing Agent for the City, or the Mayor may contract with an independent third party to serve as the Purchasing Agent.
- (b) The purchasing agent shall have the following duties and powers:
  - (i) Arrange and negotiate the purchase or contract for all equipment, supplies, and contractual services for the city or any using agency; arrange and negotiate for the sale or otherwise dispose of all surplus equipment and supplies or real estate of the city or any using agency;
  - (ii) Maintain a perpetual or periodic inventory record of all materials, supplies, or equipment stored in city storerooms, warehouses, and elsewhere, including monthly reports that provide:
    - A. The titles of all requests for proposals and the method of source selections to be used;
    - B. All contracts authorized by the council, the method of source selection used, and the total dollar amount;
    - C. All emergency contracts awarded pursuant to this article;
    - D. All change orders or contract modifications authorized by the council, the dollar amount, and the reason;
    - E. All change orders or contract modifications authorized by the purchasing agent, the dollar amount, and the reason; and
    - F. An explanation of any changes, and the costs involved, in the scope of services made between the time a contract is awarded and the time that a resolution authorizing the contract is sent to the council for adoption;
  - (iii) Control and supervise all city storerooms and warehouses, unless otherwise provided in this Code;
  - (iv) Develop and maintain a purchasing policy and procedure manual which will be updated by the purchasing agent periodically and approved by the City council;

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- (v) Direct efforts to procure services through advertisements of bids as required by this article and by state law;
- (vi) Require bonds, insurance, and other forms of protection for the city on the process of procuring goods and services for the city;
- (vii) Terminate solicitations for bids for any goods or services when, in the opinion of the purchasing agent, it is in the city's best interest to do so, including termination for breach of contract or anticipated breach of contract;
- (viii) Reject any and all bids when, in the opinion of the purchasing agent, it is in the city's best interest;
- (ix) Consult with the city attorney if a contracting party breaches or is reasonably anticipated to breach its contract with the city.

**2-73 : Legal representation.**

The city attorney represents the city in all legal matters and has the authority to provide standard terms and conditions of contracts and purchase orders and approves all contracts.

**2-74 . Purchasing policy.**

The purchasing policy, as amended from time to time and approved by Resolution of the City Council, is adopted by reference as if set out at length in this Code

**Sec.s 2-75 – 2-130 : RESERVED**

**ARTICLE VIII. - UNCLAIMED PROPERTY** [\[7\]](#)

**Sec. 2-131. - Definitions.**

For purposes of this article, certain phrases and words are defined below. Words or phrases not defined in this article, but defined in applicable state law or the Code of Brookhaven, Georgia, shall be given that meaning. All other words or phrases shall be given their common ordinary meaning unless the context requires otherwise. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them below except where the text clearly indicates a different meaning:

*Auction* in this article means a public sale where property or goods are sold to the highest bidder either in person or through an internet auction website such as propertyroom.com.

*Public sale* in this article means an auction of property or goods conducted in accordance with the requirements of O.C.G.A. § 17-5-54 and this article.

**Sec. 2-132. - Sale at auction and state law requirements.**

- (a) The city may sell at auction any and all court-awarded, unclaimed articles of personal property that come into its possession and have been abandoned, seized, or been the subject of a crime, after an

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effort has been made to ascertain the true owner thereof without success. Sale of such personal property shall not occur until the Superior Court of DeKalb County enters an order authorizing sale in accordance with the requirements of O.C.G.A. § 17-5-54, now and as it may be amended hereafter.

- (b) The city shall comply with applicable state law, including, but not limited to, O.C.G.A. §§ 17-5-54, 17-5-55 and 17-5-56, now and as such sections may be amended hereafter, in selling personal property at auction.

**Sec. 2-133. - Catalog record.**

It will be the duty of the city to maintain a separate and complete catalog record of all personal property that comes into its possession. Such personal property will be identified in detail by its usual name, make and model, manufacturer's name and serial number, if any. If there is no identifying name or number, it will be fully described in this catalog record as to its physical properties and appearance.

**Sec. 2-134. - Effort to locate owner prior to sale.**

The city will make an effort to find the true owner of any article of personal property coming into its possession. If the owner can be found, the city will release the personal property to the owner. If the true owner of the article is not found, the city will proceed to sell, destroy or retain the personal property in the manner provided in state law and in this article.

**Sec. 2-135. - When sales conducted; terms of sale.**

All personal property in the custody of the police department, including personal property used as evidence in a criminal trial, which is unclaimed after a period of ninety (90) days following its seizure, or following the final verdict and judgment in the case of personal property used as evidence, and which is no longer needed in a criminal investigation or for evidentiary purposes in accordance with O.C.G.A. § 17-5-55 or § 17-5-56, shall be subject to disposition by the police department. When articles of personal property in the possession of the police department have been authorized for sale by entry of an order of the DeKalb County Superior Court, as required by state law, the city will hold a public sale of all court-awarded, unclaimed articles of personal property. All articles will be sold to the highest bidder on an "as-is" basis, and the city makes no warranties of any nature, either expressed or implied, as to merchantable title, quality or performance.

**Sec. 2-136. - Advertisement of sale.**

- (a) Notice of the public sale referred to in this article will be advertised in the legal organ of the city once a week for four (4) consecutive weeks.
- (b) The notice shall specifically describe each item and advise possible owners of items of the method of contacting the police department; provided, however, that miscellaneous items having an estimated fair market value of seventy-five dollars (\$75.00) or less may be advertised or sold, or both, in lots. Such notice shall also stipulate a date, time, and place said items will be placed for public sale if not claimed. Such notice shall stipulate whether said items or groups of items are to be sold in blocks, by lot numbers, by entire list of items, or separately. The notice will be of sufficient size and type to be easily read and understood by the general public and will state definitely the time and place of the sale, that it will be open to the public and that all sales are to be made to the highest bidder. This notice may refer to the sale as an "auction of seized, unclaimed or awarded personal property," or by any other appropriate name and will state that only court-awarded, unclaimed personal property which has come into the possession of the city is being sold; that the city makes no warranties, either expressed or implied, as to merchantable title, quality or performance; and that all articles are sold

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"as is." The police chief or his/her designee may also advertise notice of the sale in other newspapers, on the city's website and/or on other internet advertising sites.

- (c) Items not claimed by the owners shall be sold at the public sale, which shall be conducted commencing not less than seven (7), nor more than fifteen (15) days, after the final notice has been run in the legal organ. The sale shall be to the highest bidder.

**Sec. 2-137. - Conduct of sale.**

The city may conduct a public sale using an auctioneer or may utilize an on-line auction service so long as both methods of sale comply with the applicable requirements of state law and this article. The city will appoint an individual or entity, which may include an on-line auction service, to conduct the sale authorized by this article under the guidance of an employee of the city, and more than one (1) person may act as the agent who conducts the sale of court-awarded, unclaimed personal property. The individual or entity acting for the city will be the sole arbiter in the case of a disputed sale and will not make a sale until all bidding on the article offered has ceased. However, there will not be any required number of bids before a sale is made.

**Sec. 2-138. - Announcement of terms to be made during sale.**

In the event there is an in-person auction, it will be the duty of the individual or entity holding the in-person auction authorized by this article to make or include a public announcement before opening the sale, that the city does not warrant title to any article, nor is there any other warranty, either expressed or implied, as to any article sold and that all sales are final and all articles are sold "as is." It will be the duty of the individual or entity in charge of the in-person auction to make or include this announcement at intervals during the progress of the sale. When the city uses an internet auction service to sell unclaimed personal property, there will be a statement on-line that the items are sold "as is."

**Sec. 2-139. - Disposition of sale proceeds.**

It will be the duty of the police department to make a true accounting to the city finance department of all the personal property sold and money collected from the sales conducted, as provided in this article. Such money will be deposited in the general fund and used as prescribed by law.

**Sec. 2-140. - Disposition of unsold personal property.**

All unclaimed personal property that the city has offered for public sale but is not sold can be donated to charity or destroyed, depending on the condition of said personal property, at the sole discretion of the police chief.

**Secs. 2-141—2-180. - Reserved.**

**ARTICLE IX. - DISPOSITION OF CITY OWNED PROPERTY**

**Sec. 2-181. - Disposition of city owned strips of land incapable of being used independently.**

- (a) As set forth in O.C.G.A. § 36-9-3(h), and as hereinafter amended, the city may sell and convey parcels of small or narrow strips of land, so shaped or so small as to be incapable of being used independently as zoned or under applicable subdivision or other development ordinances or land use plans, or as streets, whether owned in fee or used by easement, to abutting property owners where such sales and conveyances facilitate the enjoyment of the highest and best use of the abutting owner's property.
- (b) The sale of such property to abutting property owners authorized by this section is not required to be submitted to the process of auction or the solicitation of sealed bids so long as the sale complies with all of the following requirements:
  - (1) The planning director shall make a written determination that the real property to be conveyed is so small, narrow or shaped that it is incapable of being used independently given its zoning or provisions of applicable subdivision or other development ordinances or land use plans; and
  - (2) The real property shall be surveyed by the city, and the city shall perform an appraisal to determine the fair market value of the property; and
  - (3) The sale or conveyance complies with all applicable requirements of Georgia law including any requirements set forth in O.C.G.A. § 36-9-3, and as hereinafter may be amended; and
  - (4) The planning director's written determination, the city's survey and appraisal shall be presented to the governing authority in an appropriate manner as authorized by state law, for a determination whether to authorize staff to proceed to sell the property to the abutting property owners and to impose such conditions on the sale as desired by the governing authority; and
  - (5) If so authorized by the governing authority, each abutting property owner shall be notified in writing by the purchasing director of the availability of the property and shall have the opportunity to purchase said property under the terms and conditions imposed by the governing authority; and
  - (6) In the event the sale is authorized, the purchaser or purchasers shall pay no less than fair market value for the property and the fair market value shall be solely determined by the appraisal performed by the city; and
  - (7) In the event a sale occurs, the purchaser or purchasers shall reimburse the city for all due diligence costs incurred by the city in conducting such a sale of property, including but not limited to the city's attorney's fees, closing costs, survey costs and appraisal costs.

**Sec. 2-182. - Naming of city buildings or facilities.**

No city building or facility shall be named or renamed in honor of any person unless (1) the person is deceased or (2) is alive but no city building or facility may be named or renamed in honor of such living person if that person currently holds any elected or appointed public office. This section shall not apply to any building or facility that is owned, operated or under the jurisdiction of the state.

**Secs. 2-183—2-300. - Reserved.**

**ARTICLE X. - 9-1-1 CHARGE ON PREPAID WIRELESS SERVICE (Effective January 1, 2012) [\[1\]](#)**

**Sec. 2-300. - Prepaid wireless transactions charge.**

In accordance with O.C.G.A. § 46-5-134.2, there is hereby imposed a prepaid wireless 9-1-1 charge, as defined by O.C.G.A. § 46-5-134.2(a)(4), upon every prepaid wireless retail transaction occurring within the jurisdiction of the public safety answering point in the amount of seventy-five cents (\$0.75).

**Sec. 2-301. - Collection of 9-1-1 charge on prepaid wireless transactions.**

Prepaid wireless 9-1-1 charges collected by sellers shall be remitted to the Commissioner of the Georgia Department of Revenue at the times and in the manner provided by O.C.G.A. § 48-8-1 et seq. with respect to the sales and use tax imposed on prepaid wireless calling service.

**Sec. 2-302. - Administrative provisions.**

The City Clerk and City Manager is hereby directed to file with the Commissioner of the Georgia Department of Revenue a certified copy of this ordinance and amendments thereto, in accordance with O.C.G.A. § 46-5-134.2(j)(1), within ten (10) days of approval of this article.

**Sec. 2-303. - Depositing of funds; use of funds.**

In accordance with O.C.G.A. § 46-5-134.2(j)(5), funds received by the city from charges imposed by this ordinance shall be deposited in the emergency telephone system fund maintained by the city pursuant to O.C.G.A. § 46-5-134, and kept separate from general revenue of the jurisdiction; all such funds shall be used exclusively for the purposes authorized by O.C.G.A. § 46-5-134(f).

**Sec.s 2-304 – 2-400 : RESERVED**

**ARTICLE XI. CODE OF ETHICS**

**2-401: Definitions.**

- (a) Appointee shall be any person appointed to a City board, committee or commission by the City Council or Mayor.
- (b) City Councilmember shall be any person who is a City Councilmember, including the Mayor of the City.

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- (c) City staff shall be any person who is a full-time or part-time employee of the City, as well as any full-time or part-time employee of any independent contractor contracted to perform specific duties for, and on behalf of, the City.
- (d) Family member means the spouse, mother, father, brother, sister, son or daughter of a City Councilmember or an appointee or the mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of a City Councilmember or an appointee.
- (e) Financial interest means all direct ownership interests of the total assets or capital stock of a business entity where such ownership interest is ten percent or more.
- (f) Government or City shall be construed to mean the City of Brookhaven, Georgia, government.
- (g) Member shall include City Councilmembers and Appointees.
- (h) Substantial interest means the following: (i) funds received by the Member from the other person or entity during the previous 12 months either equal or exceed (a) \$5,000.00 in salary, bonuses, commissions or professional fees, or \$5,000.00 in payment for goods, products or services, or (b) ten percent of the recipient's gross income during that period, whichever is less; or (ii) the Member is a creditor, debtor, or guarantor of the other person or entity in an amount of \$5,000.00 or more.

**2-402 : Prohibitions**

All Members shall meet the following standards:

(a) Compliance with the law

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

(b) Policy role of Members

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

(c) Independence of boards, committees and commissions

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



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Members from speaking on behalf of the City board, committee, commission or council on which they serve when such City board, committee, commission or council has expressly authorized and appointed such Member to speak on its behalf or (iii) a Member from serving on more than one board, committee or commission of the City.

(d) Acceptance of gifts, benefits or remuneration

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

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

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

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

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

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

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

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

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

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

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

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- (4) A commercially reasonable loan or other financial transaction made in the ordinary course of business by an institution or individual authorized by the laws of Georgia to engage in the making of such loan or financial transaction; or
- (5) Campaign contributions made and reported in accordance with Georgia laws.
- (6) Any gift, loan, favor, promise or thing of value from a Family member.

(e) Conflict of Interest

- (i) A Member may not participate in a vote or decision on a matter affecting an immediate family member or any person, entity, or property in which the Member has a substantial interest.
- (ii) A Member who serves as a corporate officer or member of the board of directors of a nonprofit entity must disclose their interest in said entity to the mayor and council prior to participating in a vote or decision regarding funding of the entity by or through the city.
- (iii) Where the interest of a Member in the subject matter of a vote or decision is remote or incidental, the Member may participate in the vote or decision and need not disclose the interest.

(f) Use of Public Property

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

(g) Coercion by Members

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

(h) Voting in matters of personal interest

A Member shall not vote on an ordinance or amendment for a specific item in a City Council meeting that would directly affect his or her private business. Provided, however, that in the event of an ordinance of general application or a matter of City-wide application, or in the event such vote would be proper under the City Charter such Member shall disclose such interest and, following such disclosure, shall be allowed to vote on such matter and such vote shall not constitute a violation of these rules and shall not be the subject matter of an ethics complaint hereunder.

(i) Unauthorized use of City staff

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

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

(j) Restrictions on contracts with former Members

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The City shall not enter into any contract with any person or business represented by such person, who has been within the preceding 12-month period a Member, unless the contract is awarded by a competitive bid or a committee selection process.

(k) Improper Use of Official Non-Public Information

Members shall not directly or indirectly make use of, or permit others to make use of, official information, which at the time of its disclosure is not subject to being made available to the general public, for the purpose of furthering a private interest regardless of whether the private interest belongs to the Member or a third party.

(l) Unauthorized Attempts to Bind the City

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

(m) Improper Influence in City Judicial Matters

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

(n) Retaliatory Action Against City Employees

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

**2-403 : Receipt of Complaints**

- (a) All complaints against Members shall be filed with the city clerk, provided, however, to discourage the filing of ethics complaints solely for political purposes, complaints will not be accepted against a person seeking election as a Member, whether currently serving as a Member or not, from the date qualifying opens for the elected office at issue through the date the election results for that office are certified. The time for filing complaints will not run during this period. Properly filed complaints will be accepted and processed after the election results have been certified.
- (b) No action may be taken on any complaint which is filed later than one (1) year after a violation of this Code of Ethics is alleged to have occurred, and a complaint alleging a violation must be filed within six (6) months from the date the complainant knew or should have known of the

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action alleged to be a violation; such limitation periods to be measured from the date of the last act occurring in furtherance of such violation. No proceedings under this article shall be instituted or prosecuted after the earlier of: (i) the expiration of the term of office of the person complained against; or (ii) the resignation, death, vacancy, disqualification or withdrawal from office of the person against whom a complaint is filed.

- (c) No action may be taken on any complaint which arises out of substantially the same facts or circumstance which have previously served as the basis for a complaint pursuant to this Ordinance.
- (d) A separate complaint shall be filed for each person alleged to have engaged in any activity violating this Ordinance even if the allegations arise from the same factual basis. Each complaint shall state: (i) a separate count for each alleged violation; (ii) the specific section of state law, the City Charter, or this Ethics Ordinance alleged to be violated for each count; (iii) with specificity, the facts which are alleged to constitute the violation; and (iv) the documentary evidence which the charging party possesses. Copies of said documentary evidence shall be attached to the complaint as exhibits.
- (e) All complaints shall contain an oath that the facts set forth therein are true and correct to the best of the complainant's knowledge in substantially the following form:

"STATE OF GEORGIA  
COUNTY OF DEKALB

AFFIDAVIT

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

\_\_\_\_\_  
(Signature of person filing complaint)

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

\_\_\_\_\_  
Notary Public"

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

**2-404 : Appointment of Hearing Officer, Service of Complaint, Burden of Proof**

- (a) All complaints filed hereunder shall be heard before a Hearing Officer who: (i) shall be a competent attorney at law of good standing in his or her profession, (ii) shall have at least five (5) years'

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experience in the practice of law, and (iii) shall not maintain an office within a ten (10) mile radius of the City of Brookhaven, Georgia. The City Clerk shall maintain a listing of no less than five (5) qualified attorneys to serve as a Hearing Officer pursuant to this section. Upon receipt of a properly verified complaint, the City Clerk shall draw names randomly from the listing of qualified Hearing Officers and appoint the first one who is available to serve in the matter. Once a Hearing Officer is appointed, no Member shall communicate with or otherwise contact the Hearing Officer, except as authorized herein, unless such Member is the complainant or the Member charged in the Complaint; however, no party to a Complaint shall engage in ex parte communications with the Hearing Officer.

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

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

**2-405 : Hearing**

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

(b) Upon the expiration of the fifteen (15) day answer period, the Hearing Officer shall review the complaint and answer, if any, to determine: (i) whether the complaint is in conformity of the requirements of Section 3 above, (ii) whether upon consideration of the complaint and answer, the complaint is unjustified, frivolous, patently unfounded, or (iii) whether upon consideration of the complaint and answer, the complaint demonstrates facts sufficient to invoke disciplinary jurisdiction as set forth in this Ordinance.

(c) If the complaint fails based upon the requirements of the foregoing subsection (b), the Complaint shall be dismissed stating the basis for said dismissal. If the dismissal is based upon the failure to comply with Sections 3(d) or 3(e), the Complaining party shall have fifteen (15) days to refile the complaint correcting the defect. If the corrected complaint is not filed within said fifteen (15) day period, the provisions of section 3(c) shall apply to the complaint. If the complaint otherwise fails, the provisions of section 3(c) shall apply to the complaint.

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

(i) First, seek such further information from the complainant or the Member charged through inquiry or written questions, provided, however the Member charged shall have no obligation to answer any inquiries; and make a further determination as to whether the complaint demonstrates

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facts sufficient to invoke disciplinary jurisdiction as set forth in this Ordinance in accordance with Section 5(b) above. If it is determined that the complaint should not be dismissed pursuant to this subsection, then the provisions of Section 5(d)(ii) below shall apply; or

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

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

- (i) dismiss the complaint on the grounds that it is unjustified, frivolous, patently unfounded, or that it fails to state facts sufficient to invoke the disciplinary jurisdiction of the City Council, or
- (ii) prepare a report of findings and recommendations to the Mayor and City Council.
- (iii) Should the Hearing Officer determine to submit a report in the matter, the report shall consist of: (1) a written finding of facts; (2) a determination that the complaint establishes beyond a reasonable doubt that a violation has been committed, and if so, the specific violation and evidence supporting the same, and (3) a recommendation regarding the punishment for such violation.
- (iv) Any person violating any provision of this article is subject to:
  - (1) Public or private reprimand or censure by the city council
  - (2) Request for resignation by the city council
  - (3) Removal from office in accordance with all applicable state and local laws.
- (v) The Hearing Officer's written determination of findings and recommendations shall be delivered to the City Clerk who shall provide a copy to the City Manager and the Mayor and Council and serve a copy on the complainant and Member charged by personal service, by certified mail, return receipt requested or by statutory overnight delivery. Such findings shall not be final until approved by vote of the City Council, as provided in Section 6.

**2-406. :Report to Mayor and Council**

- (a) Upon receipt of findings and recommendations from the Hearing Officer, the Mayor and Council may:
- (i) by simple majority accept the Findings and Recommendations of the Hearing Officer.
  - (ii) by simple majority accept the findings of fact and reject the recommended discipline, instead substituting its own discipline.
  - (iii) by a supermajority consisting of a majority of those present forming a quorum, plus one, reject the findings and recommendations and either: (1) dismiss the complaint, or (2) conduct its own

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hearing in accordance with Section 5 hereof. Upon the completion of such hearing, the Findings and Recommendations of the Mayor and Council shall be binding.

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

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

**2-407 : Right To Appeal**

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

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

**Secs. 2-408—2-449. - Reserved.**

**ARTICLE XII**

**Sec. 2-450 – 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.