

**AN ORDINANCE EXTENDING THE DECLARATION OF A STATE OF
EMERGENCY ARISING BECAUSE OF COVID-19; TAKING IMMEDIATE
EMERGENCY MEASURES; ESTABLISHING AN EFFECTIVE DATE; AND
FOR OTHER PURPOSES**

WHEREAS, the President of the United States declared a National Public Health Emergency on March 13, 2020 which remains in force, through the change of Administrations; and

WHEREAS, the Governor of the State of Georgia declared a State Public Health Emergency on March 14, 2020 and urged “local officials to do what’s in the best interests of their communities to keep people safe and stop the spread of coronavirus”; and

WHEREAS, the World Health Organization has declared Coronavirus Disease 2019 (COVID-19) a world health emergency and a pandemic and has not rescinded that declaration given the worldwide impact and catastrophic consequences of the disease; and

WHEREAS, the City of Brookhaven declared a local emergency in a Specially Called Meeting on Monday March 16, 2020, and has extended that declaration through June 18, 2021; and

WHEREAS, the number of confirmed cases and deaths from COVID-19 continues to escalate, internationally, nationally, and locally with Georgia continuing to average hundreds of new cases every day for the last 2 weeks; and

WHEREAS, according to the Georgia Department of Health, less than 1/3 of Georgians have received both doses of the approved vaccines for the Virus; and

WHEREAS, public health experts, including those at the CDC and the National Institutes of Health (NIH), have advised that individuals infected with COVID-19 are contagious even while experiencing minor or no symptoms and have consistently implored leaders to continue action to prevent further community spread of COVID-19; and

WHEREAS, even with 1/3 of the Georgia Population having received one of the 3 approved vaccines, over 2/3 of the population, or over 7,000,000 people remain at risk; and

WHEREAS, preventing and slowing community spread of COVID-19 is therefore vital to the health of the Brookhaven, DeKalb County, the State, and the Nation;

WHEREAS, in the judgment of the Mayor and Council of the City of Brookhaven, there exists emergency circumstances located within its jurisdiction requiring extraordinary and immediate response for the protection of the health, safety, and welfare of the citizens of the community, the state, and the nation; and

WHEREAS, it is essential for the governing authority of the City continue to act in order to minimize the spread of COVID-19 and to prevent or minimize sickness, injury, or death, to people and damage to property resulting from this public health crisis; and

WHEREAS, O.C.G.A. § 38-3-28 provides the political subdivisions of this state with the authority to make, amend, and rescind such orders, rules, and regulations as may be necessary for emergency management purposes to supplement rules and regulations promulgated by the Governor during a State of Emergency; and

WHEREAS, the United States Supreme Court has previously held that “[u]pon the principle of self-defense, of paramount necessity, a community has the right to protect itself against an epidemic of disease which threatens the safety of its members”; and

WHEREAS, the Charter of the City of Brookhaven provides the governing authority of the city with the authority to take actions deemed necessary to deal with such an emergency for the protection of the safety, health, and well-being of the citizens of the city;

NOW, THEREFORE, IT IS HEREBY DECLARED that a local state of emergency exists within the City and shall continue until the conditions requiring this declaration are abated.

THEREFORE, IT IS ORDERED AND ORDAINED BY THE AUTHORITY OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BROOKHAVEN AS FOLLOWS:

Section 1. Findings of Fact

For purposes of describing the circumstances which warrant the adoption of an emergency ordinance, the governing authority of the City hereby adopt and make the findings included in the “WHEREAS” clauses as findings of fact.

Section 2. Extension of Declaration of Public Health State of Emergency

The Mayor and City Council hereby extend the public health state of emergency first declared and established by Ordinance 2020-05-03, within the City because of the

proliferation of COVID-19 in the United States and the State of Georgia, which will remain in force and effect as provided herein.

Section 3. Public Gatherings on City Property

The prohibition on public gatherings outdoors on City Property is hereby repealed.

Sports leagues, or sports teams sponsored or part of a recognized school, college, or university, including but not limited to Murphey Candler Baseball, Softball, and Football, shall be authorized to participate in training and games as defined by their respective league rules and regulations.

Section 4. Classification of City Services

For the duration of the declared emergency, the City Manager shall be vested with the following discretion and authority:

- (a) To categorize City services as either “required” or “discretionary,” and to periodically review and modify such categories.
- (b) To assign specific employees to required or discretionary services, and to periodically review and modify such assignments.
- (c) To use his or her discretion to permit employees to telework.
- (d) To temporarily suspend the provision of discretionary services and to direct employees who provide discretionary services not to report to work until such time as the service suspension is lifted or until such time as the City Manager redirects the employee to other services.
- (e) To maintain, to the best of the ability of the resources of the City, the provision of essential services, which shall include, but not be limited to, public safety, public works, healthcare, and building permits.
- (f) To determine if City Buildings, facilities, playgrounds, and services should be closed or suspended.

Any actions taken by the City Manager prior to the passage of this Ordinance that are authorized by this section are hereby ratified and approved by the Governing Authority of the City.

Section 5. Eating Establishments

The conditions and authority of Restaurants to operate shall continue as provided in Ordinance 2020-04-06, including encouraging take out and permitting take-away delivery of alcoholic beverages by the drink. Restaurants shall continue to be authorized to utilize parking spaces to the maximum extent possible for outdoor dining or tented dining.

Establishments are encouraged the continue limiting indoor seating.

Restaurants and eating establishments are encouraged to have their staff wear face coverings, even if the staff have been vaccinated, in order to protect customers and other staff. COVID-19 remains highly contagious, and may be spread by a person who shows no symptoms. The CDC encourages persons, even if vaccinated, to wear face coverings when in groups of people who may not be vaccinated.

Section 6. Emergency Powers and Authority of the Mayor

(a) The Council expressly delegates to the Mayor authority and power to take emergency action as he deems appropriate, after consultation with the Council, to include:

(1) Declaring and announcing further closures of businesses or changing the definition of essential businesses;

(2) Declaring further measures as may be necessary to stem the spread of COVID-19 as may be defined, refined, or changed by the Centers for Disease Control and Prevention, the National Institute of Health, or the World Health Organization;

(3) Establishing or extending a Shelter in Place Order directive;

(4) Taking such action as may be necessary to protect the health, safety, and welfare of the citizens and residents of Brookhaven.

(b) The Council may call a special emergency meeting as established in the Charter to ratify, amend, or rescind any declaration by the Mayor.

(c) Any emergency declaration or order by the Mayor may not last beyond the date and time of the next regularly scheduled meeting of the Mayor and City Council.

Section 7. Face Coverings and Masks No Longer Required

The mandate to wear a mask while indoors in all of the City of Brookhaven expired on June 1, 2021, and is not reinstated by this Ordinance.

Local businesses are encouraged to set clear and transparent policies for wearing a face mask in their businesses. If masks are required, signs should be posted in doors allowing ingress to the business. If masks are not required, signs should be posted for patrons to see.

No face covering shall be required while eating or drinking, if a person has a bona fide religious objection to wearing a face covering, or if the person has a documented inability to wear a face covering because of a medical condition.

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Section 8. Finding for Purposes of Open Meetings Act

The Open Meetings Act, O.C.G.A. § 51-14-1 *et seq.*, allows public agencies such as the City to conduct their meetings via teleconference in the event of an emergency. The Council expressly finds and declares that the Global Pandemic caused by the spread of COVID-19 continues to constitute an emergency within the terms of the Act. Accordingly, all meetings of any Board, Commission, Authority, or the City Council shall be held by virtual means, to include the use of the Zoom platform with concurrent live streaming of the proceedings on Facebook Live or YouTube live as chosen and selected by the Administration. Public Comment will be taken via the Zoom Platform or with emailed comments to publiccomment@brookhavenga.gov. In all other respects the meetings will be conducted as though they were in person and held at City Hall.

Section 9. Conflicts

All ordinances or parts of ordinances in conflict with the provisions of this Declaration are hereby suspended during the effective dates of this ordinance (or any extension thereof) and the terms and provisions of this ordinance shall prevail.

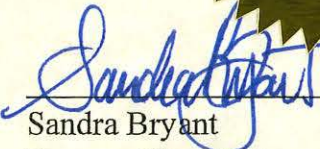
Section 10. Finding of Unlawfulness or Pre-emption

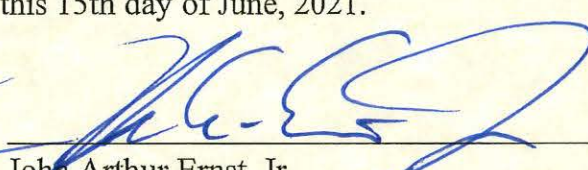
If any Court of competent jurisdiction shall find any part or portion of this Ordinance to be unlawful or pre-empted by State law, such section shall be null, void, and of no force or effect; however all other and remaining portions and parts of this Ordinance shall remain in full force and effect, notwithstanding the invalidated section.

This Ordinance shall become effective immediately and shall be in place until 11:59 p.m. on June 18, 2021, unless repealed or further extended by action of the City Council.


ORDAINED AND RESOLVED, this 15th day of June, 2021.

Attest:


Sandra Bryant
Deputy City Clerk


John Arthur Ernst, Jr.
Mayor

Approved as to form:

DocuSigned by:

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Christopher D. Balch
City Attorney