



MEMORANDUM

MEETING OF: August 22, 2017
COMMITTEE: Planning Commission
DEPARTMENT: Community Development

ISSUE/AGENDA ITEM TITLE:

TA17-13 an Ordinance to Amend Chapter 27 Zoning, Article VI Enforcement & Penalties, of the Code of the City of Brookhaven

BACKGROUND/SUMMARY:

The proposed amendment updates the City's regulations related to granting of permits by the Department of Community Development. The amendment began as a clean-up of permit expiration dates ahead of the implementation of new permitting software and electronic plan review, which is scheduled for the end of 2017. When drafting the amendment, it was determined that the existing ordinance duplicated or conflicted with text in other code sections. At this time, the Department is proposing to correct these duplications and conflicts.

STAFF RECOMMENDATION:

Approval as presented.

ATTACHMENTS:

- TA17-13 MARK-UP An Ord to Amend Chapter 27, Zoning, Article VI Enforcement & Penalties (PDF)

**STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN**

ORDINANCE 2017 _____

**AN ORDINANCE TO AMEND CHAPTER 27, ZONING, ARTICLE VI ENFORCEMENT & PENALTIES, OF THE
CODE OF THE CITY OF BROOKHAVEN**

WHEREAS, Section 1.03(b)(25) of the Charter of the City of Brookhaven grants the City of Brookhaven the power to provide comprehensive planning and regulation through zoning and subdivision requirements to ensure a safe, healthy, and aesthetically pleasing community; and

WHEREAS, the Mayor and City Council find that amendments to the existing ordinance are necessary to correct duplicated or conflicting text related to granting of permits by the Department of Community Development.

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia and it is hereby ordained by the authority of same:

SECTION I:

Chapter 27, Zoning, Article VI Enforcement & Penalties, is amended to read as follows:

ARTICLE VI. - ENFORCEMENT AND PENALTIES

DIVISION 1. - GENERALLY

Secs. 27-1734-27-1759. - Reserved.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 27-1760. - Administration and enforcement; granting of permits.

The community development director, shall be responsible for the interpretation, administration and enforcement of the provisions of this chapter. The community development department director shall have the duty to issue permits as required with respect to this chapter.
(Ord. No. 2014-09-03, § I(27-956), 9-23-2014)

Sec. 27-1768. - Records.

The community development department shall maintain records of all official administrative actions. The director shall further maintain records of all complaints filed pursuant to the requirements of this chapter and of all actions taken with regard to such complaints, and of all violations discovered by whatever means, with remedial action taken and disposition of cases. All such records shall be public records.

(Ord. No. 2014-09-03, § I(27-964), 9-23-2014)

Sec. 27-1769. - Inspection; right of entry.

Upon presentation of city identification to the developer, contractor, owner, owner's agent, operator or occupants, city employees authorized by the mayor and city council and/or the community development director or designee may enter during all reasonable hours any property for the purpose of making inspections to determine compliance with the provisions of this chapter.

(Ord. No. 2014-09-03, § I(27-965), 9-23-2014)

Sec. 27-1770. - Inspection; warrants.

The community development department director, in addition to other procedures provided, may obtain an inspection warrant under the conditions specified in this division. The warrant shall authorize the community development director and/or his designee to conduct a search or inspection of property, either with or without the consent of the person whose property is to be searched or inspected, under the conditions set out in this section.

- (1) Inspection warrants may be issued by the municipal court when the issuing judge is satisfied that all of the following conditions are met:
 - a. The person seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property.
 - b. The issuing judge determines that the issuance of the warrant is authorized by this section.
- (2) The inspection warrant shall be validly issued only if it meets all of the following requirements:
 - a. The warrant is attached to the affidavit required to be made in order to obtain the warrant.
 - b. The warrant describes, either directly or by reference to the affidavit, the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property for which the warrant authorizes an inspection.
 - c. The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal.
 - d. The warrant refers, in general terms, to the ordinance provisions sought to be enforced.

(Ord. No. 2014-09-03, § I(27-966), 9-23-2014)

Sec. 27-1771. - Remedies.

In case any building or structure is or is proposed to be erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is or is proposed to be used in violation of any provision of this chapter, the city may, in addition to other remedies, and after due notice to the owner of the violation, issue a citation for violation of this chapter requiring the presence of the violator in municipal court. The city may also in such cases institute injunction or other appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate this violation or to prevent the occupancy of this building, structure or land. Where a violation of this chapter exists with respect to a

structure or land, the community development department director and/or his designee may, in addition to other remedies, require that public utility service be withheld therefrom until such time as the structure or premises is no longer in violation of this chapter.

(Ord. No. 2014-09-03, § I(27-967), 9-23-2014)

Sec. 27-1772. - Notice in writing; order to stop work; revocation of permits.

Whenever any building, structure or premises is being constructed, used, or occupied contrary to the provisions of this chapter, the community development department director and/or his designee may order the work stopped.

(Ord. No. 2014-09-03, § I(27-968), 9-23-2014)

Sec. 27-1773. - Fees.

Fees and charges for permits and inspections shall be as adopted by ordinance of the city council.

(Ord. No. 2014-09-03, § I(27-969), 9-23-2014)

Secs. 27-1775-27-1796. - Reserved.

DIVISION 3. - VIOLATION AND PENALTIES

Sec. 27-1797. - Violations of this chapter.

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or use any land in the city, or cause the same to be done, contrary to or in violation of any of the provisions of this chapter.

(Ord. No. 2014-09-03, § I(27-981), 9-23-2014)

Sec. 27-1798. - Penalties.

Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of an offense and upon conviction in municipal court shall be punished as is provided in section 1-11. Where any violation continues, each day's continuance of a violation shall be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this chapter exists, and any architect, builder, contractor or any other agent of the owner, or any tenant, who commits or assists in the commission of any violation, shall be guilty of a separate offense. In addition, the city may revoke the business license of any entity found guilty of violating this chapter in accordance with the procedures of this article for a period of time not to exceed five years, except to the extent prohibited by law.

(Ord. No. 2014-09-03, § I(27-982), 9-23-2014)

Sec. 27-1799. - Repeal of conflicting ordinances; validity of prior approvals and actions.

This chapter is the zoning ordinance of the city, and all other conflicting ordinances or resolutions are hereby repealed, provided that nothing herein shall be construed as repealing the conditions of use, operation, or site development accompanying zoning approval or permits issued under previous zoning ordinances or resolutions, provided further that modification or repeal of these past conditions of approval may be accomplished as authorized and provided by this chapter. All variances and exceptions heretofore granted by the board of appeals shall remain in full force and effect, and all terms, conditions

and obligations imposed by the board of appeals shall remain in effect insofar as required for the initiation of any proceedings against these violations and for the prosecution of any violations heretofore commenced.

(Ord. No. 2014-09-03, § I(27-983), 9-23-2014)

Sec. 27-1800. - Additional legal remedies.

In addition to all other actions and penalties authorized in this chapter, the city attorney is hereby authorized to institute injunctive, abatement or any other appropriate judicial or administrative actions or proceedings to prevent, enjoin, abate, or remove any violations of this chapter.

(Ord. No. 2014-09-03, § I(27-984), 9-23-2014)

SECTION II:

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

SECTION III:

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

SECTION IV:

Effective Date: This ordinance shall be effective immediately upon adoption.

SO ORDAINED, this _____ day of _____, 2017.

Approved by:

Approved as to Form and Content

John Arthur Ernst Jr., Mayor

Christopher Balch, City Attorney

Attest:

Susan Hiott, City Clerk

SEAL