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MEMORANDUM

To: Mayor and City Council
From: Billy Grogan, Chief of Police
Thru: Warren Hutmacher, City Manager
Date: February 28, 2011
Subject: **Pain Management Clinics**

ITEM DESCRIPTION

An ordinance regulating Pain Management Clinics.

BACKGROUND

On October 25, 2010, the City Council passed a 90 day moratorium on Pain Management Clinics to provide the City of Dunwoody with sufficient time to analyze the impact of Pain Management Clinics and to consider whether regulation of such Pain Management Clinics is necessary.

In early 2010, the Marietta Cobb Smyrna narcotics task force formed a committee to investigate the proliferation of pain management clinics and their threat to public safety. On December 10, 2010, this committee released their report making a number of recommendations to address this issue. The City of Marietta has adopted these recommendations and passed them in an ordinance. Other municipalities in Cobb County are currently considering similar legislation.

Our City Attorney has reviewed the recommendations from the Marietta Cobb Smyrna task force committee and has drafted the attached ordinance for your consideration.

RECOMMENDED ACTION

At this time, staff recommends the City Council adopt the attached ordinance.

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2011-02-09

AN ORDINANCE AMENDING CHAPTER 10 OF THE CITY OF DUNWOODY CODE OF ORDINANCES BY ADDING ADDITIONAL REQUIREMENTS FOR BUSINESSES DISPENSING CONTROLLED SUBSTANCES

WHEREAS, the Mayor and City Council of the City of Dunwoody are authorized to assess Occupation Taxes within the geographic boundaries of the City and to administer and enforce said requirements pursuant to State law; and

WHEREAS, the City finds that pain clinics as facilities who dispense Schedule II, III and IV controlled substances are often dispensing pain medications to those claiming pain, without performing proper and thorough examinations of said patients and their medical records, do not make proper medical diagnosis and are sometimes not operated by licensed physicians (the "Code"); and

WHEREAS, the City Council wishes to discourage the operation of these types of "pill mills" within the City of Dunwoody in order to protect the health, safety and welfare of the citizens of the City; and

WHEREAS, the Mayor and City Council wish to amend Chapter 10 to add additional submittal and operational requirements in order to obtain an occupation tax certificate for those businesses who intent to dispense certain controlled substances; and

WHEREAS, a Public Hearing has been held on February 28, 2011 pursuant to State Law to allow for comments to the proposed changes.

NOW, THEREFORE, Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Chapter 10 of the City of Dunwoody Code of Ordinances is hereby amended by new Section 10-23 to Article I (In General), titled "Additional Requirements for Pain Management Clinics" to read as follows:

Sec. 10-23. Additional Requirements for Pain Management Clinics.

- (a) *Definition.* "Dispense" shall mean to issue one or more doses of any drug in a suitable container with appropriate labeling for subsequent administration to, or use by, a patient. This definition excludes hospitals, surgery centers, in-patient care facilities, assisted living facilities, outpatient facilities operated or owned by a hospital system or pharmacy, and pharmacies.
- (b) Each applicant for an occupation tax certificate under this Article, or renewal of same, whose business dispenses, or intends to dispense, Schedule II, III, or IV drugs, as defined in O.C.G.A. §43-34-23, shall state same on each original or renewal application for an occupation tax certificate and shall, along with its occupation tax return pursuant to this Chapter, submit to the City the following documents:

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- (1) The name and DEA number of every licensed physician practicing associated or with an ownership interest in the business, along with a copy of a valid license for each such physician;
 - (2) The business' website address, if available;
 - (3) List of locations of any other clinics or practices associated with or owned by the same parties as applicants; and
 - (4) List of the Board of Directors, officers and partners of the business and all persons with a financial interest in the business.
- (c) A business described herein is not eligible for an occupation tax certificate in the City if any convicted felon owns, manages, has a financial interest in, or is a director, officer or partner of the business. A Nolo contendere plea shall be considered as an adjudication of guilty for the purposes of this provision.
- (d) A business described herein is not eligible for an occupation tax certificate in the City if any physician practicing, associated or with an ownership interest in the business is on probation or suspended by any medical board for issues related to dispensing drugs.
- (e) A business described herein, and all physicians practicing, associated or with an ownership interest in the business must be registered with the State of Georgia Composite Medical Board as dispensing physicians, and provide proof of such registration prior to being eligible for an occupation tax certificate in the City.
- (f) A business described herein shall follow the storage standards and requirements for drugs as set forth by the Georgia Drugs and Narcotics Agency in order to remain eligible to receive an occupation tax certificate or a certificate of occupancy, if one is required.

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this the ___ day of _____, 2011.

Approved:

Ken Wright, Mayor

Approved as to Form and Content

Attest:

Sharon Lowery, City Clerk (Seal)

Brian Anderson, City Attorney