

**AN ORDINANCE TO AMEND CHAPTER 14, MUNICIPAL COURT, BY ADDING A
NEW SECTION ENTITLED A PRE-TRIAL INTERVENTION AND DIVERSION
PROGRAM, TO BE ADMINISTERED BY THE CITY OF MILTON SOLICITOR'S
OFFICE FOR THE PURPOSE OF ENDING THE REPEAT OFFENSES OF THEFT BY
SHOPLIFTING, UNDERAGE POSSESSION OF ALCOHOL, DISORDERLY
CONDUCT AND OTHER MISCELLANEOUS MISDEMEANOR AND TRAFFIC
OFFENSES THROUGH THE EDUCATION OF ELIGIBLE DEFENDANTS;
AND FOR OTHER PURPOSES.**

The Council of the City of Milton hereby ordains while in regular session on the 6th day of January, 2010 at 6:00 p.m.:

WHEREAS, the City of Milton has an interest in maintaining the health, safety and welfare of the citizens of the City of Milton and its visitors; and

WHEREAS, O.C.G.A. §15-18-80 authorized the prosecuting attorney (the City of Milton Solicitor) for a municipal court to create and administer a Pre-Trial Intervention and Diversion program for offenses within the jurisdiction of such municipal courts; and

WHEREAS, the purpose of any Pre-Trial Intervention and Diversion Program is to provide an alternative to prosecuting offenders in the criminal justice system (O.C.G.A. § 15-18-80 (b)); and

WHEREAS, it is the desire of the City of Milton to establish a new Pre-Trial Intervention and Diversion Program to be known as the *City of Milton Pre-Trial Intervention and Diversion Program* for the purpose of Educating and counseling those who are first offenders and preventing the occurrence of repeat offenses; and

WHEREAS, the participants in the *City of Milton Pre-Trial Intervention and Diversion Program* would be those persons who have been adjudicated or have plead guilty or nolo contendere to the offenses of Theft by Shoplifting, Underage Possession of Alcohol, Disorderly Conduct, Possession of Marijuana, and other miscellaneous misdemeanor offenses including traffic offenses, but who have not yet had a judgment of guilt entered against them; and

WHEREAS, the *City of Milton Pre-Trial Intervention and Diversion Program* would educate participants on the legal consequences of subsequent offenses and the modification of behavior that led to the commission of the crime.

WHEREAS, entry into the *City of Milton Pre-Trial Intervention and Diversion Program* would be at the discretion of the City of Milton Solicitor based upon written guidelines (O.C.G.A. § 15-18-80 (c)); and

WHEREAS, in implementing the *City of Milton Pre-Trial Intervention and Diversion Program*, the City of Milton Solicitor must create written guidelines for acceptance into and administration of the program, which must include, but are not limited to, consideration of the nature of the crime, the prior arrest record of the offender, and the notification and response of the victim (O.C.G.A. § 15-18-80 (d)); and

WHEREAS, the City of Milton Solicitor cannot accept any offender into the *City of Milton Pre-Trial Intervention and Diversion Program* for an offense for which the law provides a mandatory minimum sentence of incarceration or imprisonment that cannot be suspended, probated, or deferred (O.C.G.A. § 15-18-80 (e)); and

WHEREAS, in implementing the *City of Milton Pre-Trial Intervention and Diversion Program*, the City of Milton Solicitor is authorized to access and collect from each offender who enters the program a fee not to exceed \$300.00 for the administration of the program, and any such fee must be made payable to the general fund of the City of Milton (O.C.G.A. § 15-18-80 (f)); and

WHEREAS, by administering the *City of Milton Pre-Trial Intervention and Diversion Program*, the City of Milton Solicitor is authorized by the State law to collect restitution on behalf of victims, and any such restitution collected must be made payable to and disbursed by the clerk of the City of Milton Municipal Court (O.C.G.A. § 15-18-80 (g)); and

THE CITY COUNCIL OF THE CITY OF MILTON, GEORGIA HEREBY ORDAINS, as follows:

Section 1: That the Ordinance relating to Amending Chapter 14, Municipal Court, of the City of Milton Code of Ordinances be amended to add a Article 8 in its entirety as it relates to the Pre-Trial Intervention and Diversion Program is adopted and approved; and is attached hereto as if fully set forth herein; and

Section 2: All ordinances, parts of ordinances, or regulations in conflict herewith are repealed.

Section 3: The amendment in this ordinance shall become effective immediately upon adoption.

Section 14: Should it be found that any ordinance or parts of any ordinance are in conflict herewith, then those sections contained herein shall be deemed controlling.

ORDAINED this 6th day of January, 2010.

Approved:

Joe Lockwood, Mayor

Attest:

Sudie AM Gordon, Interim City Clerk

Article 8: Pre-Trial Intervention and Diversion Program

Section 1: Pre-Trial Intervention and Diversion Program established.

In accordance with Official Code of Georgia Annotated § 15-18-80, a pretrial diversion program for offenders in the Municipal Court of the City of Milton ("Court") is hereby established. The Court on its own motion, on the motion of the Solicitor, or at the request of a defendant, may initiate an investigation into an alleged offender's eligibility to participate in the Court's Pre-Trial Intervention and Diversion program (hereinafter sometimes referred to as the "Program").

Section 2: Pre-Trial Intervention and Diversion Program.

- (a) Upon a submission of a plea of guilty or a plea of nolo contendere to the underlying charges, but before an adjudication or judgment of guilt, the sentencing court may, in its discretion, without entering a judgment of guilt and with the consent of the defendant, defer further proceeding and enroll the defendant in an educational program administered by the Solicitor's Office in accordance with Official Code of Georgia Annotated 15-18-80.
- (b) Upon successful completion of all terms and conditions of the Program, and a showing that the defendant has not violated any other ordinances of the City of Milton, and the laws of the State of Georgia or any other state for a period of one year from the date of entry into the Program, the Court shall dismiss all charges against the defendant and the Court shall not make an adjudication of guilt on the underlying charges.
- (c) The case may be advanced and a bench warrant or other notice to appear shall be issued in the event of a defendant's failure to comply with all the terms or conditions of the Program. If the defendant violates the agreement or conditions of participation, the defendant's guilty plea may be entered by the sentencing court, and a sentence thereon may be imposed in the manner provided by law. Any waiver executed, to enter into the Program pursuant to this Article, shall be void on the date the accused is removed from the Program.
- (d) All persons referred to the Program will be assessed an administrative fee as authorized in Official Code of Georgia Annotated 15-18-80(f) for the administration of the Program. Any such fee collected shall be deposited into the City of Milton general fund.