

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CITY CODE SECTION 2-10-21(A) TO ALLOW A JUDGE TO OFFER INDIGENT DEFENDANTS THE OPTION OF ACCEPTING ALTERNATIVE SENTENCING IN LIEU OF FINES, ADDING SECTION 2-10-21(B) OF THE CITY CODE TO INCLUDE JUDICIAL DISCRETION FOR DETERMINING INDIGENCY, AND ADDING SECTION 2-10-25 TO INCLUDE PRESUMPTIONS OF INDIGENCE .**

**PART 1.** Subsections (A) and (B) of City Code Section 2-10-21 (Fines, Alternative Sentencing, and Imprisonment) are amended to read as follows:

§ 2-10-21 FINES, ALTERNATIVE SENTENCING, AND IMPRISONMENT.

(A) If a defendant is convicted of an offense, a judge may direct the defendant to pay a fine immediately, at a later date, or in designated installments, or allow ~~the defendant~~ an indigent defendant to accept ~~[to choose]~~ alternative sentencing in lieu of payment of a fine. If a defendant defaults on payment of a fine or fails to comply with alternative sentencing, a judge may imprison the defendant until the fine is paid in full.

(B) A municipal court judge shall consider whether a defendant is indigent in determining the amount and manner of payment of a fine, an alternative sentence, or imprisonment.

**PART 2.** City Code Chapter 2-10 (Municipal Court) is amended to add a new Section 2-10-25 to read as follows:

§ 2-10-25 – PRESUMPTION OF INDIGENCE.

For the purpose of imposing a fine, alternative sentence, or imprisonment under Section 2-10-21:

(A) A defendant may be presumed indigent if the defendant establishes that any of the following conditions exist at the time of the judge's action:

(1) The defendant's household income does not exceed 200% of the poverty guidelines established by the U.S. Department of Health and Human Services in effect at the time of the judge's action, and the difference between the defendant's monthly net income and reasonable necessary expenditures is less than \$500;

(2) The defendant or the defendant's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, public housing, or benefits under a similar state, federal, or local program based upon financial status;

(3) The defendant is serving a sentence in a correctional institution, is residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; or

(4) The defendant is currently enrolled in and attending middle school, or high school, or is under the age of 17.

(B) A municipal judge may determine that a defendant who does not meet the conditions in Subsection (A) is indigent if the defendant is otherwise unable to pay a monetary fine assessed under Subsection 2-10-21(A) without substantial hardship to the defendant, or the defendant's dependents. In making this determination, the judge may consider the defendant's income, sources of income, assets, property owned, outstanding obligations, necessary expenses, number and ages of dependents, and spousal income available to the defendant.

**PART 3.** This ordinance takes effect on \_\_\_\_\_, 2017.

**PASSED AND APPROVED**

\_\_\_\_\_, 2017

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Steve Adler  
Mayor

**APPROVED:** \_\_\_\_\_

Anne L. Morgan  
City Attorney

**ATTEST:** \_\_\_\_\_

Jannette S. Goodall  
City Clerk

DRAFT