

ORDINANCE NO. 034, 2020  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AMENDING CHAPTER 1 OF THE CODE OF THE CITY OF FORT  
COLLINS TO ESTABLISH STANDARDS FOR SENTENCES TO  
PROBATION AND DEFERRED JUDGMENTS AND SENTENCES

WHEREAS, the City Council provided funds for hiring and employment of a probation officer by the Fort Collins Municipal Court in the 2020 budget; and

WHEREAS, probation, which is an alternative to fines and jail time, provides a benefit to both offenders and the community in allowing for rehabilitative action and appropriate supervision; and

WHEREAS, Municipal Court is increasingly sentencing individuals with needs that can be addressed through a probationary sentence, such as substance abuse disorders and mental health issues; and

WHEREAS, supervision by probation will increase the likelihood that individuals will engage in treatment and complete sentencing requirements and increase early intervention and rehabilitation for municipal offenders; and

WHEREAS, probationary sentences are lower cost than incarceration and will allow low-risk offenders to remain in the community and work toward greater stability and productivity; and

WHEREAS, in order to effectively run a probation division, the City needs to establish both authority to sentence to probation and procedures for revocation of probation; and

WHEREAS, deferred judgements and sentences allow offenders to complete certain conditions and have their guilty pleas withdrawn and the case dismissed; and

WHEREAS, conditions placed on a deferred judgment and sentence would be appropriately supervised by a probation division; and

WHEREAS, a uniform procedure for revoking probation and/or a deferred judgment and sentence ensures fairness and due process; and

WHEREAS, guidance and express authorization for imposing probation sentences will ensure Municipal Court judges sentence consistently and fairly; and

WHEREAS, the City Council has determined that the proposed amendments are in the best interests of the City and are necessary for the health, safety, and welfare of the City's citizens.

NOW, THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 1 of the Code of the City of Fort Colins is hereby amended by adding new Sections 1-25 through 1-28 to read as follows:

**Sec. 1-25. Sentences to Probation.**

(a) A person who has been convicted of a non-traffic offense is eligible to apply to the Municipal Court for probation. A person may be referred to or ordered to probation for supervision of conditions of any deferred judgment and sentence agreement.

(b) The Municipal Court may grant the defendant probation for such period and upon such terms and conditions as it deems just and appropriate, balancing the best interests of both the public and the defendant. The length of probation is at the Municipal Court's discretion and may exceed the maximum period of incarceration authorized for the classification of the offense of which the defendant is convicted but shall not exceed two (2) years.

(c) If the Municipal Court grants the defendant probation, the order placing the defendant on probation shall take effect upon entry and, if any appeal is brought, shall remain in effect pending review by an appellate court unless the court grants a stay of probation. Unless an appeal is filed that raises a claim that probation was granted contrary to law, the Municipal Court shall retain jurisdiction of the case.

(d) In addition to imposing other conditions, if the conviction is for a misdemeanor, the Municipal Court may impose jail as a condition of probation. The aggregate length of any such commitment whether continuous or at designated intervals may not exceed sixty (60) days.

(e) The Municipal Court, in its discretion may grant probation to a defendant unless it is satisfied that imprisonment is the more appropriate sentence because:

(1) There is undue risk that during a period of probation the defendant will commit another crime; or

(2) the defendant is in need of correctional treatment that can most effectively be provided by a sentence to imprisonment; or

(3) a sentence to probation will unduly depreciate the seriousness of the defendant's crime or undermine respect for law; or

(4) the defendant's past criminal record indicates that probation would fail to accomplish its intended purposes; or

(5) the crime, the facts surrounding it, or the defendant's history and character do not justify the granting of probation.

(f) The following factors, or the converse thereof where appropriate, while not controlling the discretion of the Municipal Court, shall be accorded weight in making determinations called for by this Section:

- (1) the defendant's criminal conduct neither caused nor threatened serious harm to another person or his or her property;
- (2) the defendant did not plan or expect that such criminal conduct would cause or threaten serious harm to another person or his or her property;
- (3) the defendant acted under strong provocation;
- (4) there were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct;
- (5) the victim of the defendant's conduct induced or facilitated its commission;
- (6) the defendant has made or will make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained;
- (7) the defendant has no history of prior criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense;
- (8) the defendant's conduct was the result of circumstances unlikely to recur;
- (9) the character, history, and attitudes of the defendant indicate that the defendant is unlikely to commit another crime;
- (10) the defendant is particularly likely to respond affirmatively to probationary treatment;
- (11) imprisonment would entail undue hardship to the defendant or the defendant's dependents;
- (12) the defendant is elderly or in poor health;
- (13) the defendant did not abuse a public position of responsibility or trust;
- (14) the defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise.

Nothing in this Section shall be deemed to require explicit reference to these factors in a presentence report or by the Municipal Court at sentencing.

**Sec. 1-26. Conditions of Probation.**

(a) The conditions of probation shall be such as the Municipal Court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life and to assist the defendant in doing so. Mandatory conditions of probation shall include:

- (1) that the defendant not commit another offense during the period for which the sentence or deferred judgment and sentence remains subject to revocation;
- (2) that the defendant make restitution if ordered;
- (3) that the defendant comply with any court orders regarding substance abuse testing and treatment; and
- (4) that the defendant not harass, molest, intimidate, retaliate against, or tamper with the victim of or any prosecution witnesses to the crime, unless the Municipal Court makes findings that such condition is not necessary.

(b) When granting probation, the Municipal Court may, as a condition of probation, require that the defendant:

- (1) work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip the defendant for suitable employment;
- (2) undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.
- (3) participate in restorative justice practices, if available, and the defendant is determined suitable by a designated restorative justice practices facilitator. Failure to complete the requirements arising from a restorative justice conference may be considered a violation of probation. Nothing in this subparagraph shall be construed to require a victim to participate in restorative justice practices or a restorative justice victim-offender conference.
- (4) pay reasonable costs of the Municipal Court proceedings or costs of supervision of probation, or both.
- (5) pay any fines or fees imposed by the Municipal Court or complete useful public service in lieu of payment if the defendant is deemed indigent by the Municipal Court;
- (6) refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Municipal Court or probation officer;
- (7) refrain from use or excessive use of alcohol or any unlawful use of controlled substances, or of any other dangerous or abusable drug without a prescription; except that the Municipal Court shall not, as a condition of probation, prohibit the possession or use of medical marijuana, unless the Municipal Court determines, based on any material

evidence, that a prohibition against the possession or use of medical marijuana is necessary and appropriate to accomplish the goals of sentencing;

(8) report to a probation officer at reasonable times as directed by the Municipal Court or the probation officer;

(9) remain within the jurisdiction of the Municipal Court, unless granted permission to leave by the Municipal Court or the probation officer;

(10) answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in physical, mailing and email addresses, phone numbers or employment;

(11) be subject to home detention;

(12) be subject to electronic or global position monitoring;

(13) satisfy any other conditions reasonably related to the defendant's rehabilitation and the purposes of probation;

(14) participate in drug treatment. If the defendant's assessed treatment need is for residential treatment, the Municipal Court may make residential drug treatment a condition of probation;

(15) attend school or an educational program or to work toward the attainment of a high school diploma or the successful completion of a high school equivalency examination; except that the Municipal Court shall not require any juvenile to attend a school from which such juvenile has been expelled without the prior approval of that school's local board of education;

(16) participate in Special Agency Session or other programs.

(c) A defendant who is granted probation or is on a deferred judgment and sentence supervised by probation shall be given a written statement explicitly setting forth the conditions of probation or probation supervised deferred judgment and sentence.

(d) For good cause shown and after notice to the defendant, the City Attorney's Office, and the probation officer, and after a hearing if the defendant or the City Attorney's Office requests it, the Judge may reduce or increase the term of probation or alter the conditions or impose new conditions.

#### **Sec. 1-27. Deferred Judgment and Sentence.**

(a) In any case in which the defendant has entered a plea of guilty or no contest, the Municipal Court has the power, with the written consent of the defendant, the defendant's attorney of record, and the City Attorney's Office, to continue the case for the purpose of entering judgment and

sentence upon the plea of guilty for a period not to exceed two (2) years. The period shall begin to run from the date that the Municipal Court continues the case.

(b) Prior to entry of a plea of guilty or no contest to be followed by deferred judgment and sentence, the City Attorney's Office, in the course of plea discussion is authorized to enter into a written stipulation, to be signed by the defendant, the defendant's attorney of record, and the City Attorney's Office, under which the defendant is obligated to adhere to such stipulation. The conditions imposed in the stipulation shall be similar in all respects to conditions permitted as part of probation and a deferred judgment and sentence may be supervised by a probation officer. In addition, the stipulation may require the defendant to perform community or charitable work service projects or make donations thereto.

(c) Upon full compliance by the defendant with the written conditions of a stipulation, the plea of guilty or no contest previously entered shall be withdrawn and the charge upon which the judgment and sentence of the Municipal Court was deferred shall be dismissed with prejudice and the defendant given notice of eligibility to seal municipal records pertaining to the case dismissed.

(d) When, as a condition of the deferred judgment and sentence, the Municipal Court orders the defendant to make restitution and has determined that the defendant has the ability to pay, evidence of failure to pay the restitution shall constitute prima facie evidence of a violation.

(e) Whether a breach of condition has occurred shall be determined by the Municipal Court without a jury upon motion of the City Attorney's Office and upon notice of hearing thereon of not less than seven (7) days to the defendant or the defendant's attorney of record. Failure of the defendant to appear before the Municipal Court as required shall be deemed a violation of the conditions of a deferred judgment and sentence supervised by probation and the Municipal Court may issue a warrant for the defendant's arrest.

(f) Application for entry of judgment and imposition of sentence may be made by the City Attorney's Office at any time within the term of the deferred judgment and sentence or within thirty-five (35) days thereafter.

(g) The burden of proof at the hearing shall be by a preponderance of the evidence, and the procedural safeguards required in a revocation of probation hearing shall apply.

(h) When a defendant signs a stipulation providing that judgment and sentence shall be deferred for a time certain, defendant waives all rights to a trial.

(i) A warrant for the arrest of any defendant for breach of a condition of a deferred judgment and sentence may be issued by any judge of the Municipal Court upon the report of a probation officer, or upon the verified complaint of any person, establishing to the satisfaction of the judge probable cause to believe that a condition of the deferred judgment and sentence has been violated and that the arrest of the defendant is reasonably necessary.

**Sec. 1-28. Revocation of probation or deferred judgment and sentence supervised by probation.**

(a) If a probation officer has reason to believe that the conditions of probation or a deferred judgment and sentence have been violated by any defendant on probation or under probation supervision of conditions of a deferred judgment and sentence, the probation officer may notify the prosecutor. The prosecutor may file a motion to revoke probation and request a hearing. The Municipal Court may issue notice of hearing requiring the defendant to appear before the Municipal Court at a specified time and place to answer charges of violation of the conditions of probation. The motion to revoke and request for hearing shall contain a brief statement of the violation and the date and place thereof. A copy of the motion shall be given to the defendant a reasonable length of time before the defendant's scheduled appearance in Municipal Court.

(b) Failure of the defendant to appear before the Municipal Court as required shall be deemed a violation of the conditions of probation or conditions of a deferred judgment and sentence supervised by probation and the Municipal Court may issue a warrant for the defendant's arrest.

(c) At the first appearance of the defendant in Municipal Court or at the commencement of the hearing, whichever is first in time, the Municipal Court shall advise the defendant of his or her rights in the revocation proceeding, including the right to court-appointed counsel if qualifies as indigent and that there is no right to a trial by jury in proceedings for revocation of probation.

(d) At or prior to the commencement of the hearing, the Municipal Court shall advise the defendant of the alleged violations of conditions of probation and the possible penalties and shall require the defendant to admit or deny the allegations.

(e) At the hearing, the prosecution has the burden of establishing by a preponderance of the evidence the violation of a condition of probation; except that the commission of a criminal offense must be established beyond a reasonable doubt unless the defendant has been convicted thereof in a criminal proceeding. The Municipal Court may, when it appears that the alleged violation of conditions of probation consists of an offense with which the defendant is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of the criminal proceeding.

(f) When, in a revocation hearing, the alleged violation of a condition is the defendant's failure to pay court-ordered compensation to appointed counsel, probation fees, court costs, restitution, or reparations, evidence of the failure to pay shall constitute prima facie evidence of a violation. Any evidence having probative value shall be received regardless of its admissibility under the exclusionary rules of evidence if the defendant is accorded a fair opportunity to rebut hearsay evidence. The Municipal Court shall not revoke probation for failure to pay unless the Municipal Court has made findings on the record, after providing notice to the defendant and a hearing, that the defendant has the ability to comply with the Municipal Court's order to pay a monetary amount due without undue hardship to the defendant or the defendant's dependents and that the defendant has not made a good-faith effort to comply with the order.

(g) For purposes of subsection, a defendant or a defendant's dependents are considered to suffer undue hardship if they would be deprived of money needed for basic living necessities, such as food, shelter, clothing, necessary medical expenses, or child support. In determining whether a

defendant is able to comply with an order to pay a monetary amount without undue hardship to the defendant or the defendant's dependents, the Municipal Court shall consider:

- (1) whether the defendant is experiencing homelessness;
  - (2) the defendant's present employment, income, and expenses;
  - (3) the defendant's outstanding debts and liabilities, both secured and unsecured;
  - (4) whether the defendant has qualified for and is receiving any form of public assistance, including food stamps, temporary assistance for needy families, medicaid, or supplemental security income benefits;
  - (5) the availability and convertibility, without undue hardship to the defendant or the defendant's dependents, of any real or personal property owned by the defendant;
  - (6) whether the defendant resides in public housing;
  - (7) whether the defendant's family income is less than two hundred percent of the federal poverty line, adjusted for family size; and
  - (8) any other circumstances that would impair the defendant's ability to pay.
- (h) If the defendant is in custody, the hearing shall be held within fourteen (14) days after the filing of the complaint, unless delay or continuance is granted by the court at the instance or request of the defendant or for other good cause found by the Municipal Court justifying further delay.
- (i) If the defendant fails to appear at the hearing referenced in this paragraph after receiving notice, the Municipal Court may issue a warrant for his or her arrest for failure to appear.
- (j) If the Municipal Court determines that a violation of a condition of probation has been committed, it shall, within seven (7) days after the said hearing, either revoke or continue the probation. If probation is revoked, the Municipal Court may then impose any sentence or grant any probation pursuant to the provisions of Code Section 1-15 which might originally have been imposed or granted.

Introduced, considered favorably on first reading, and ordered published this 4th day of February, A.D. 2020, and to be presented for final passage on the 18th day of February, A.D. 2020.

  
Mayor

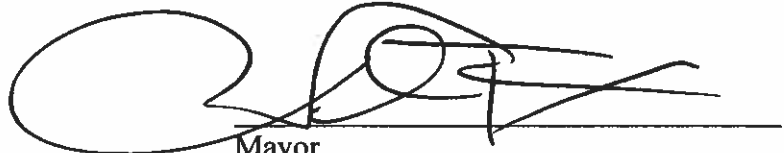
ATTEST:

  
City Clerk





Passed and adopted on final reading on the 18th day of February, A.D. 2020.

  
Mayor

ATTEST:

  
City Clerk

