

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

**ENTITLED: "AN ORDINANCE CREATING SECTION 2.40.100, PUBLIC DEFENDER AND REPRESENTATION OF NEEDY PERSONS; DETERMINATION OF NEED, OF CHAPTER 2.40, MUNICIPAL COURT, OF TITLE 2, ADMINISTRATION AND PERSONNEL, OF THE MUNICIPAL CODE OF THE CITY OF CHEYENNE, WYOMING, SPECIFYING PUBLIC DEFENDER APPOINTMENT PROCEDURES AND STANDARDS FOR REPRESENTATION IN THE MUNICIPAL COURT."**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHEYENNE, WYOMING:**

Section 1. That Section 2.40.100, Public Defender and Representation of Needy Persons; Determination of Need, of Chapter 2.40, Municipal Court, of Title 2, Administration and Personnel, of the City of Cheyenne, Wyoming, is hereby created as set out in this section:

**2.40.100 - Public defender and representation of needy persons; determination of need.**

- A. The municipal court shall appoint a public defender to provide legal representation to any needy person who is formally charged with having committed a jailable offense if:
  - 1. The defendant requests counsel; or
  - 2. The court, on its own motion or otherwise, orders the appointment of a public defender and the defendant does not affirmatively waive or reject, on the record, the opportunity to be represented by a public defender in the proceeding.
- B. The determination of whether a person is a needy person shall be deferred until his or her first appearance or arraignment in court, whichever is earlier. Thereafter, the court shall determine, with respect to each proceeding, whether he or she is a needy person. At the person's initial appearance or arraignment, whichever is earlier, the court shall advise any defendant who is a needy person of his or her right to be represented by a public defender. The court shall further explain to the needy person the possibility that he or she may be ordered to reimburse the city for the costs associated with his or her legal representation. For purposes of this section, a probation revocation or proceeding to correct or modify a sentence is a separate proceeding. The determination of need shall be based on a separate application submitted at the time of each proceeding.
- C. In determining whether a person is a needy person and in determining the extent of his or her inability to pay, and, in the case of an unemancipated minor, the inability to pay of his or her custodial parent or another person who has a legal obligation of support, the court shall consider the standards set forth in subsections (D) and (E) of this section and Rule 44(d), Wyoming Rules of Criminal Procedure. Release on bond or bail does not necessarily prevent a person from being determined to be needy. In each case the person, subject to the

penalties for perjury, shall certify in writing, or by other record, the material factors relating to his or her ability to pay as the court prescribes.

D. The following income standards shall be used to determine whether a person is needy for purposes of this section:

1. A person whose annual gross income is less than one hundred twenty-five percent (125%) of the current federally established poverty level for his or her immediate family unit is needy;
2. A person whose annual gross income is between one hundred twenty-five percent (125%) and two hundred eighteen percent (218%) of the current federally established poverty level for his or her immediate family unit may be deemed needy; and
3. A person whose annual gross income is greater than two hundred eighteen percent (218%) of the current federally established poverty level for his or her immediate family unit shall not be deemed needy under this section.

E. Notwithstanding subsection (D) of this section, a person shall be presumed needy if:

1. He or she receives at least one (1) of the following types of public assistance:
  - a. Temporary Assistance for Needy Families (TANF);
  - b. Emergency Aid to Elderly, Disabled and Children (EAEDC);
  - c. Poverty related veteran's benefits;
  - d. Supplemental nutrition assistance program (SNAP);
  - e. Medicaid; or
  - f. Supplemental Security Income (SSI).

F. In every case in which a person eighteen (18) years of age or over has received services from a public defender appointed under this section, the presiding judge shall determine whether the person is able to provide any funds towards payment of part or all of the cost associated with such services. If the person is not able to provide any funds towards payment of costs, the court shall enter a specific finding on the record. If the court determines the person is able to provide any amount as reimbursement, the court shall order the person to reimburse the city for all or part of the costs of the services provided or shall state on the record the reasons why an order for reimbursement was not entered. Where a person is initially provided with a public defender, but subsequently retains private counsel, the court may order the person to reimburse the city for the services already provided. All reimbursements under this section shall be made through the clerk of court and thereafter remitted to the city treasurer.

G. As used in this section:

1. "Jailable offense " means:

- a. Any misdemeanor under the laws of the city of Cheyenne for which incarceration as a punishment is a practical possibility, provided, however, that a public defender need not be appointed if the judge, at the initial appearance or arraignment, whichever is earlier, determines and states on the record that he or she will not sentence the defendant to any period of imprisonment if the defendant is convicted of the misdemeanor; or
- b. Any misdemeanor offense under the laws of the city of Cheyenne, a conviction of which is a "misdemeanor crime of domestic violence" as defined in 18 U.S.C. § 921(a)(33), and which may therefore result in the disqualification of the person to possess firearms pursuant to the provisions of 18 U.S.C. §§ 922(g)(9) and 924(a)(2), regardless of the determination of the judge that he or she intends not to impose a term of incarceration for the stated offense.

2. "Needy person" means a person who at the time of his or her need of an attorney is unable to provide for the full payment of an attorney and all other necessary expenses of representation without prejudicing his or her financial ability to provide basic economic necessities for himself or herself, or his or her family, considering the person's available funds and the anticipated cost of the attorney.

Section 2. Sections, paragraphs, sentences, clauses, and phrases of this ordinance are severable. If any section, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or otherwise unlawful, such declaration shall not affect any of the remaining sections, paragraphs, sentences, clauses, and phrases.

Section 3. This ordinance shall be in full force and effect upon approval and publication.

**FIRST READING:** \_\_\_\_\_

**SECOND READING:** \_\_\_\_\_

**THIRD AND FINAL READING:** \_\_\_\_\_

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PATRICK COLLINS, MAYOR

(SEAL)

ATTEST:

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KRISTINA F. JONES, CITY CLERK

Published: \_\_\_\_\_  
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