

BY AUTHORITY

ORDINANCE NO. **4201**

COUNCILLOR'S BILL NO. **29**

SERIES OF 2023

INTRODUCED BY COUNCILLORS

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A BILL  
FOR AN ORDINANCE AMENDING CHAPTER 22 OF TITLE I OF THE WESTMINSTER  
MUNICIPAL CODE CONCERNING RESTITUION

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Section 1-22-25, W.M.C., is hereby ADOPTED as follows:

1-22-25. – Restitution.

(A) Every order of conviction, and in any case where a defendant receives a deferred judgment or deferred prosecution for a specified charge, for any municipal ordinance violation, civil infraction, traffic infraction or traffic misdemeanor shall include a consideration of restitution. This consideration shall result in an order including at least one of the following:

(1) An order of a specific amount of restitution to be paid by the defendant;

(2) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within ninety-one (91) days immediately following the order of conviction, unless good cause is shown for extending the time period by which the Court shall determine the restitution amount;

(3) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of a victim, including an animal, of the crime; or

(4) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

(B) For purposes of this section the following definitions apply:

(1) Victim shall mean any person, including an entity, aggrieved by the conduct of an offender.

(2) Restitution shall mean any pecuniary loss suffered by a victim which was proximately caused by a defendant's conduct and can be reasonably calculated and recompensed in money. Restitution includes any cost, impoundment fees, damages, or expenses incurred by the City. Restitution may also include the cost of prosecution.

(3) Good cause shall mean any reasonable extenuating circumstances, including but not limited to, delays caused by the need for briefing, giving notice, processing motions, hearings, or issuing written orders. Additionally, a reasonable time needed to find, calculate, or collect documentation regarding the pecuniary loss shall be considered good cause.

(C) If a request or motion for restitution is received by the Court within 91 days of conviction, entry of judgment, or entry of a deferred judgement or deferred prosecution, the Court shall issue an Order and Notice of Restitution Request. Service may be made on the defendant by Certified First Class U.S. Mail to the address most recently known to the Court. Service will be deemed complete 7 days after mailing. The Order and Notice of Restitution Request shall inform the defendant of the following:

(1) That the Defendant has the option of filing a stipulation to the requested restitution, or setting the matter for a contested hearing;

(2) At a contested hearing, the People would have the burden of proving the amount of restitution and that the Defendant's conduct was the proximate cause of the loss by a preponderance of the evidence;

(3) The Defendant has the right to be represented by an attorney at the hearing. If the Defendant qualifies for a public defender, one will be appointed upon the Defendant's request;

(4) The Court must receive the Defendant's request for a contested hearing within 21 days of being served with the Court's Order and Notice of Restitution Request. Failure to timely request a contested hearing will be deemed a waiver of the contested hearing;

(5) Upon waiver of a contested hearing, or entry of a stipulation to the requested restitution, the motion for restitution shall be granted unless the Court finds that cause exists to deny the motion. If the motion is denied by the Court, the Court may issue additional orders or set the matter for a contested hearing;

(6) Failure to pay restitution as ordered may be deemed a contempt of court in addition to being considered a violation of the terms of probation, a deferred judgment, or a deferred prosecution.

(D) Co-defendants, and parents of a juvenile ordered to pay restitution, are jointly and severally liable for payment of restitution.

(E) If the record is silent as to whether an order concerning restitution was entered pursuant to subsection (A) above, then the provisions of subsection (A)(2) above shall apply as if entered by the Court.

(F) At the discretion of the Court, restitution may be deemed unavailable when the pecuniary loss can be paid through insurance, self-insurance, indemnity agreement, or a risk management fund.

(G) In addition to the procedures outlined in this section, the Court may issue any orders or require any procedure necessary to ensure a just and equitable outcome.

(H) Notwithstanding the foregoing provisions, no victim shall be denied restitution solely due to the passage of a deadline established by this section if good cause is shown for the delay within 364 days of the conviction, entry of judgment, or entry of a deferred judgement or deferred prosecution.

(I) Whenever a defendant fails to make a payment of restitution within seven (7) days after the date that the payment is due, including payments pursuant to a payment plan established by the clerk, the Court may issue a notice to show cause requiring the defendant to appear before the Court and show cause why the required payment or payments were not made. Service may be made on the defendant by certified first class U.S. mail to the address most recently known to the Court.

(J) If the restitution was ordered as a term of the defendant's sentence to probation or deferred judgement agreement, the people may file a motion to revoke the defendant's probation or deferred judgment and request the matter be set for a hearing.

(K) Following a finding at a show cause or revocation hearing that the defendant failed to pay ordered restitution, the Court may:

(1) Order that the defendant be confined to jail with a recommendation that the defendant participate in a work release program.

(2) Revoke probation or deferred judgement and extend the period of probation with any additional conditions the court finds appropriate.

- (3) Revoke probation or deferred judgment and impose any other sentence permitted by law;
- (4) Find the defendant in contempt of court and impose any authorized penalties for such action.

(L) Notwithstanding the foregoing, a defendant may avoid the penalties in subsection (K) of this Section if the defendant establishes by a preponderance of the evidence that they were unable to make the payments without undue hardship and despite making good faith and reasonable efforts to do so.

(1) Any order for restitution entered pursuant to this section is a final civil judgment in favor of the city and any victim. Notwithstanding any other civil or criminal municipal code, Colorado statute or rule, any such judgment remains in force until the restitution is paid in full.

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this \_\_\_ day of \_\_\_\_\_, 2023.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this \_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO LEGAL FORM:

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City Attorney's Office