

ORDINANCE NO. 10- 2010-03

AN ORDINANCE OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING THE GUADALUPE TOWN CODE, CHAPTER 5, MAGISTRATE COURT, RELATING TO HOME DETENTION AND MONITORING.

WHEREAS, pursuant to Arizona Revised Statutes, §§ 9-499.07(A) and (M), the Town of Guadalupe (the "Town") may establish a home detention program for persons sentenced to jail confinement by the Town Magistrate of the Town Magistrate Court (the "Magistrate"); and

WHEREAS, the Mayor and Council of the Town of Guadalupe (the "Town Council") desire to amend the Guadalupe Town Code to permit the Town Magistrate to implement a home detention, electronic monitoring and alcohol/drug testing program (the "Program") in order to provide a secure and cost-effective alternative for certain qualified offenders to serve their sentences; and

WHEREAS, a public hearing regarding the establishment of the Program was held by the Mayor and Council of the Town of Guadalupe on November 10, 2010; and

WHEREAS, the Town Council has found that the Program will provide a necessary and desirable alternative penalty for certain qualified offenders.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA as follows:

SECTION 1. The foregoing recitals are incorporated as if fully set forth herein.

SECTION 2. The Guadalupe Town Code, Chapter 5, Magistrate Court, is hereby amended by adding a new Article 5-7, Home Detention and Electronic Monitoring, to read as follows:

Section 5-7-1 Home Detention and Electronic Monitoring

- A. To the extent authorized by applicable law, the Town Magistrate or Assistant Town Magistrate (the "Judge") of the Town Magistrate Court (the "Court") may, in the exercise of the Judge's discretion, order home detention, electronic monitoring and alcohol/drug testing as a term of an adult sentence ordered by the Court, as provided herein.
1. A Defendant may be sentenced to home detention, electronic monitoring and alcohol/drug testing in any situation where such person is sentenced or ordered confined to any jail in this state, upon such terms and conditions as the Judge may direct.
 2. A Defendant is not eligible for home detention if any of the following apply:
 - a. The Defendant constitutes a risk to himself or other members of the community.
 - b. The Defendant has a past history of violent behavior.
 - c. The conviction for which the Defendant is being sentenced is a domestic violence offense pursuant to Arizona Revised Statute § 13-3601, as amended.
 - d. The conviction for which the Defendant is being sentenced is an act of prostitution or solicitation pursuant to Arizona Revised Statute § 13-3214, as amended.
 - e. The Defendant is not eligible pursuant to Arizona Revised Statute § 9-499.07, as amended.

3. If a Defendant is sentenced to jail confinement by the Court in any driving under the influence ("DUI") charge (Arizona Revised Statutes § 28-1381, *et seq.*, as amended), the Court may substitute home detention for a portion of the jail term as provided in this Section. Any Defendant placed in a home detention program as a term of a DUI sentence must serve an initial 24 consecutive hours in jail, except as provided in subsection 5-7-1(A)(4) below. The Defendant shall bear the costs of incarceration and be responsible for payment of thereof.
 4. If a Defendant is sentenced pursuant to Arizona Revised Statute § 28-1381(K), as amended, or Arizona Revised Statute § 28-1382(D) or (E), as amended, the Defendant must first serve a minimum of 15 consecutive days in jail before being eligible to be placed in a home detention program. The Defendant shall bear the costs of incarceration and be responsible for payment of thereof.
- B. A Defendant placed in a home detention program shall be subject to electronic monitoring in the Defendant's home and shall be required to remain at home during the hours specified by the Court. A Defendant sentenced pursuant to Arizona Revised Statutes §§ 28-1381 or 28-1382, shall be tested at least once daily for the use of alcohol or drugs in a manner approved by the Court.
 - C. If the Defendant attends educational classes in Maricopa County or is employed within Maricopa County, the Court may permit the Defendant to attend classes or leave home for employment during specified hours. The Court may permit the Defendant to attend religious services or funerals, or to seek medical care or other Court-approved counseling.
 - D. The Court may, but is not required to, order that prisoners participate in community restitution work programs. In such a program, the following constitute acceptable community restitution work: Municipal and other government public works projects, or other projects sponsored and supervised by public or private community organizations. All such private community organizations must be certified as non-profit entities as defined by Section 501(C)(3) of the United States Internal Revenue Code. The Defendant may not be compensated for such work. The Town Council of the Town of Guadalupe shall act as the Town of Guadalupe Community Restitution Committee unless, in its discretion, it chooses to appoint an advisory committee. The Presiding Magistrate of the Town of Guadalupe Court shall have full discretion to determine which community restitution programs, if any, shall be approved and which Defendants, if any, shall be assigned to community restitution work.
 - E. A Defendant placed in a home detention program shall bear the expense and be responsible for payment of the full cost of the home detention, including electronic monitoring and alcohol or drug testing costs, to the program provider/administrator. The Court may assess a lesser amount based on the ability of the person to pay pursuant to Arizona Revised Statute § 9-499.07(D). Non-payment of any program costs may result in termination of home detention. The Court shall order the Defendant to reimburse the Town of Guadalupe for any home detention costs the Town incurs as a result of the Defendant being sentenced to home detention.
 - F. The Court shall terminate a Defendant's participation in a home detention program and require the Defendant to complete the remaining term of any sentence by jail confinement if the Court

finds the Defendant (i) has not successfully completed Court ordered alcohol or drug screening and treatment pursuant to Arizona Revised Statutes § 28-1381 or 28-1382, or pursuant to any other Court-ordered program, or (ii) has left the home during home detention without permission of the Judge or supervising authority. The Court may terminate a Defendant's participation in the home detention program and require jail confinement for any other violation of the terms of the home detention order.

- G. As required by Arizona Revised Statute § 9-499.07(D), in addition to any other fees or costs, the Court shall order that the Defendant pay an electronic monitoring fee of \$30 per month while being electronically monitored. Said fee shall be used by the Town to offset the costs of monitoring the program.

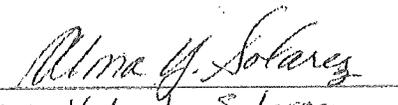
SECTION 3. That, if any provision or any portion of any provision of this Ordinance is for any reason held to be unconstitutional or otherwise unenforceable by a court of competent jurisdiction, such provision or portion thereof shall be deemed separate, distinct and independent of the remaining provisions of this Ordinance and shall be severed therefrom without affecting the validity of the remaining portions of this Ordinance.

SECTION 4. That the Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED and ADOPTED by the Mayor and Council of the Town of Guadalupe, Arizona,
November 10, 2010.

ATTEST:


Rose Mary Arellano, Town Clerk


Mayor, Yolanda Solarez

APPROVED AS TO FORM:


David E. Ledyard, Esq., Town Attorney


Robert Melton, Presiding Magistrate
Town of Guadalupe Court