

ORDINANCE NO. 10-03

AN ORDINANCE OF THE TOWN OF FOUNTAIN HILLS, ARIZONA, AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 5, MUNICIPAL COURT, RELATING TO HOME DETENTION AND MONITORING.

WHEREAS, pursuant to ARIZ. REV. STAT. §§ 9-499.07(A) and (M), the Town of Fountain Hills (the "Town") may establish a home detention program for persons sentenced to jail confinement by the presiding judge of the Town Municipal Court (the "Presiding Judge"); and

WHEREAS, the Mayor and Council of the Town of Fountain Hills (the "Town Council") desire to amend the Fountain Hills Town Code to permit the Presiding Judge 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 Fountain Hills on September 2, 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 FOUNTAIN HILLS, ARIZONA as follows:

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

SECTION 2. The Fountain Hills Town Code, Chapter 5, Municipal 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 presiding judge (the "Judge") of the Town Municipal 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 or juvenile disposition ordered by the Court, as provided herein.
1. A person (adult or juvenile) is not eligible for home detention if any of the following apply:
 - a. The person constitutes a risk to himself or other members of the community.
 - b. The person has a past history of violent behavior.

- c. The conviction for which the person is being sentenced is a domestic violence offense pursuant to ARIZ. REV. STAT. § 13-3601, as amended.
 - d. The conviction for which the person is being sentenced is an act of prostitution or solicitation pursuant to ARIZ. REV. STAT. § 13-3214, as amended.
 - e. The person is not eligible pursuant to ARIZ. REV. STAT. § 9-499.07, as amended.
2. If a person is sentenced to jail confinement by the Court (the “Responsible Party”) in any driving under the influence (“DUI”) charge, the Court may substitute home detention for a portion of the jail term as provided in this Section. Any Responsible Party 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)(3) below. The Responsible Party shall bear the costs of incarceration and be responsible for payment of thereof.
3. If a Responsible Party is sentenced pursuant to ARIZ. REV. STAT. § 28-1381(K), as amended, or ARIZ. REV. STAT. § 28-1382(D) or (E), as amended, the Responsible Party must first serve a minimum of 15 consecutive days in jail before being eligible to be placed in a home detention program. The Responsible Party shall bear the costs of incarceration and be responsible for payment of thereof.
- B. A Responsible Party placed in a home detention program shall be subject to electronic monitoring in the Responsible Party’s home and shall be required to remain at home during the hours specified by the Court. A Responsible Party sentenced pursuant ARIZ. REV. STAT. §§ 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 Responsible Party attends educational classes in Maricopa County or is employed within Maricopa County, the Court may permit the Responsible Party to attend classes or leave home for employment during specified hours. The Court may permit the Responsible Party to attend religious services or funerals, or to seek medical care or other Court-approved counseling.
- D. The Court may require a Responsible Party placed in a home detention program to participate in community service work or impose other reasonable requirements or restrictions the Court deems necessary.
- E. A Responsible Party 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. Non-payment of any program costs may result in termination of home detention.

- F. The Court shall terminate a Responsible Party's participation in a home detention program and require the Responsible Party to complete the remaining term of any sentence by jail confinement if the Court finds the Responsible Party (i) has not successfully completed Court ordered alcohol or drug screening and treatment pursuant to ARIZ. REV. STAT. §§ 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 Responsible Party's participation in the home detention program and require jail confinement for any other violation of the terms of the home detention order.

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 Fountain Hills, Arizona, September 2, 2010.

FOR THE TOWN OF FOUNTAIN HILLS:

ATTESTED TO:


Jay T. Schlum, Mayor


Bevelyn J. Bender, Town Clerk

REVIEWED BY:

APPROVED AS TO FORM:


Richard L. Davis, Town Manager


Andrew J. McGuire, Town Attorney