

ORDINANCE NO. 2021-905

AN ORDINANCE OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, ARIZONA, AMENDING THE TOWN CODE, TITLE III, ADMINISTRATION, CHAPTER 34, COURT, BY ADDING A NEW SECTION 34.05, HOME DETENTION PROGRAM, RELATED TO THE ESTABLISHMENT AND ADMINISTRATION OF A HOME DETENTION PROGRAM BY THE PRESIDING MAGISTRATE OF THE MAGISTRATE COURT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

WHEREAS, A.R.S. § 9-499.07 allows cities or towns to establish prisoner work, community restitution work, continuous alcohol monitoring, and home detention programs for eligible sentenced prisoners; and

WHEREAS, home detention/electronic monitoring programs have been proven to be successful in other jurisdictions within Arizona; and

WHEREAS, home detention, coupled with intensive treatment and electronic monitoring, has been proven to be an effective alternative to incarceration for DUI offenders; and

WHEREAS, the ongoing COVID-19 pandemic has impacted certain aspects of normal jail operations, including the availability of work release or weekend/partial service of sentence, which can affect a prisoner's ability to remain gainfully employed; and

WHEREAS, the Town Council finds the necessity of establishing a home detention program for persons who are sentenced to jail confinement pursuant to A.R.S. § 28-1381 or § 28-1382; and

WHEREAS, the Town Magistrate has submitted the Home Detention Program attached hereto as Exhibit A ("the Program") and has recommended that the Town Council approve the Program; and

WHEREAS, the Town Council finds that detailed provisions related to sentencing, prisoner eligibility, administration, and other matters are best left to the discretion of the judicial branch of government, and therefore approves the Program as submitted.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Common Council of the Town of Chino Valley, Arizona, as follows:

Section 1. The recitals above are hereby incorporated as if fully set forth herein.

Section 2. The Chino Valley Town Code, Title III (Administration), Chapter 34 (Court), is hereby amended by adding a new Section 34.05 (Home Detention Program), to read as follows:

§ 34.05 Home Detention Program

(A) There is hereby established in the town a prisoner work, community restitution work, and home detention program for eligible sentenced prisoners, as authorized by and in compliance with A.R.S. § 9-499.07. This program shall be implemented only after approval by the Presiding Magistrate of the Magistrate Court, and shall operate only

in compliance with A.R.S. § 9-499.07. Home detention shall not be granted in a sentence imposed for an offense involving domestic violence as defined by A.R.S. § 13-3601, in a sentence imposed for an offense involving prostitution as defined by A.R.S. § 13-3214 or solicitation thereof, in a sentence imposed upon a person who constitutes a risk to himself or other members of the community, in a sentence imposed upon a person with a history of violent behavior, or in any situation in which a prisoner is ineligible for home detention pursuant to the terms of A.R.S. § 9-499.07.

- (B) There is hereby established, within the overall structure of the prisoner work, community restitution work, and home detention program for eligible sentenced prisoners, a home detention program for persons who are sentenced to jail confinement pursuant to A.R.S. § 28-1381 or § 28-1382. A person placed under such program shall bear the cost of all testing, monitoring, and enrollment in alcohol or substance abuse programs unless, after determining the inability of the prisoner to pay the cost, the court assesses a lesser amount. A person placed under such program shall not be eligible for home detention until the person has served a minimum of one day in jail or 20% of the initial term of incarceration in jail, as applicable pursuant to A.R.S. § 9-499.07 (N).
- (C) There is hereby established a continuous alcohol monitoring program for persons who are sentenced to jail confinement pursuant to A.R.S. § 28-1381 or § 28-1382. This program shall be implemented only after approval by the Presiding Magistrate of the Magistrate Court, and shall operate only in compliance with A.R.S. § 9-499.07.
- (D) The Presiding Magistrate of the Magistrate Court shall maintain detailed criteria for the town's prisoner work, community restitution work, home detention, and continuous alcohol monitoring program or programs, including eligibility criteria (the "Program"). The initial Program, as reflected in Exhibit A to Ordinance No. 2021-905, is hereby adopted as if fully set forth herein. The Program shall be subject to amendment, from time to time, by the Presiding Magistrate at her own discretion, provided that it shall comply at all times with the provisions of this Section and with the provisions of A.R.S. § 9-499.07.
- (E) This Section and its provisions shall automatically terminate and shall be of no force and effect after September 30, 2022, unless, after meeting all of the public notice and hearing requirements set forth in State Law, the Town Council determines this Section and its provisions should remain in effect, as currently written or as may be modified.

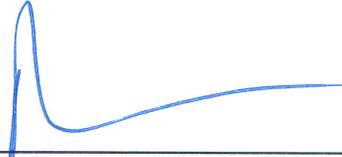
Section 3. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Section 6. Because of the urgent need for implementation of measures to reduce overcrowding in correctional facilities during the ongoing COVID-19 pandemic, the immediate operation of this Ordinance is necessary for the preservation of health, safety, and welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately upon adoption by the Town Council.

Section 8. The Mayor, the Town Manager, the Town Clerk and the Town Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona, this 28th day of September, 2021.



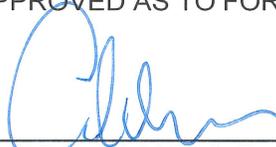
Jack W. Miller, Mayor

ATTEST:



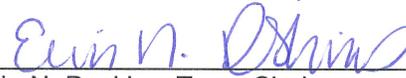
Erin N. Deskins, Town Clerk

APPROVED AS TO FORM:



Gust Rosenfeld PLC, Town Attorney
By: Andrew J. McGuire

I hereby certify the above foregoing Ordinance No. 2021-905 was duly passed by the Council of the Town of Chino Valley, Arizona, at a meeting held on September 28, 2021, and that quorum was present, and that the vote thereon was 7 ayes and 0 nays and 0 abstentions. Council members were absent or excused.



Erin N. Deskins, Town Clerk

EXHIBIT A
TO
ORDINANCE NO. 2021-905

[Home Detention Program]

See following pages

TOWN OF CHINO VALLEY
HOME DETENTION PROGRAM
PURSUANT TO ARS 9-499.07

Subject to the approval of the sentencing judge, persons sentenced to a period of incarceration may serve all or a portion of their sentence under home detention in lieu of confinement in jail in accordance with the terms and conditions set forth herein.

1. A person 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 of ARS 13-3601, as amended.
 - d. The conviction for which the person is being sentenced is an act of prostitution or solicitation pursuant to ARS 13-3214, as amended.
 - e. The person is not eligible pursuant to ARS 9-499.07, as amended.
2. If a person (the "Defendant") is sentenced to jail confinement by the Court 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 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 section 3 below. The Defendant shall bear the costs of confinement and be responsible for payment thereof.
3. Notwithstanding § 28-1387, subsection C (work release), if the prisoner is sentenced under § 28-1381, subsection K or § 28-1382, subsection I the prisoner must first serves a minimum of twenty per cent of the initial term of incarceration in jail before being placed under home detention or continuous alcohol monitoring. The Defendant shall bear the costs of incarceration and be responsible for payment thereof.
4. 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 ARS 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.
5. If the Defendant attends educational classes in or is employed within Yavapai 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, but any such event shall require the Court's prior written permission.
6. During the term of the home detention, Defendant shall not:
 - a. Consume any alcoholic beverages; and

- b. Take any drugs unless pursuant to a health care provider's order; and
 - c. Associate with individuals detrimental to the Defendant's successful participation in the program.
- 7. The Court may require a Defendant placed in a home detention program to participate in community service work or impose other reasonable restrictions the Court deems necessary.
- 8. A Defendant placed in a home detention program shall bear the expense and be responsible for payment of the full costs of the home detention, including electronic monitoring and alcohol and/or drug testing cost, to the program provider. Non-payment of any program costs may result in termination of home detention or the failure to receive credit for the confinement.
- 9. 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
 - a. has not successfully completed Court ordered alcohol or drug screening and treatment pursuant to ARS 28-1381 or 28-1382, or pursuant to any other Court -ordered program, or
 - b. has left the home during home detention without permission of the Judge or supervising authority.
 - c. 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.
- 10. Before any person may participate in the home detention and electronic monitoring program, the Town shall have entered into a contract with one (1) or more providers to implement the home detention and electronic monitoring program and the provider is subject to contractual language regarding notification and requirements set forth in the contract.

APPROVED by:

s/JDwyer
Joan Dwyer, Presiding Magistrate

Date

9-2-2021