

**Town of Erie
Ordinance No. 013-2024**

**An Ordinance of the Town Council of the Town of Erie Repealing
and Reenacting Section 1-4-14 of the Erie Municipal Code
Regarding the Sealing of Municipal Court Records**

Whereas, Senate Bill 2022-99 ("SB 99") expanded procedures for automatically sealing certain criminal records and updated procedures for non-automatic sealing of records; and

Whereas, to promote the public health, safety and welfare, the Town Council wishes to amend the Erie Municipal Code to align with the requirements of SB 99.

Now Therefore be it Ordained by the Town Council of the Town of Erie, Colorado, as follows:

Section 1. Section 1-4-14 of the Erie Municipal Code is repealed in its entirety and reenacted as follows:

1-4-14 – Sealing of records.

A. *Automatic sealing.* The Municipal Court shall automatically seal all records of a defendant's case and serve the sealing order upon the custodian of criminal justice records no later than twenty-eight (28) days after the disposition when such case against a defendant is completely dismissed, when the defendant is acquitted of all counts in the case, when the defendant completes a diversion agreement, or when the defendant completes a deferred judgment and sentence and all counts are dismissed.

B. *Non-automatic sealing.* When a defendant is not eligible for automatic sealing, the defendant may petition the Municipal Court for the sealing of such records in the following circumstances:

1. If three (3) or more years have passed from the final disposition of all criminal proceedings or the date of release from supervision, whichever is later, and the defendant has not been charged with or convicted of a felony, misdemeanor, or misdemeanor or traffic offense in the three (3) or more years since said date; or

2. If ten (10) or more years have passed from the final disposition of all criminal proceedings or the date of release from supervision, whichever is later, and the defendant was charged with a subsequent offense before successfully sealing a prior offense and all of the following apply:

- i. The defendant was convicted of a single subsequent offense that was not a felony and did not involve domestic violence, unlawful sexual behavior, or child abuse;
- ii. The defendant was convicted of a single subsequent offense that was not a felony, misdemeanor, or misdemeanor traffic offense after the date of the final disposition of all criminal proceedings against the defendant or the date of the defendant's release from supervision, whichever is later; and
- iii. The original conviction is not a municipal assault or battery offense in which the underlying factual basis involves domestic violence.

C. *Fee and filing process.*

1. For non-automatic sealing, the defendant shall pay a processing fee of sixty-five dollars (\$65.00) to the Town to cover the Town's actual costs, which may be waived by the Municipal Court upon a finding of indigency. Such fee shall be collected as other court costs and transmitted to the treasurer of the Town and deposited in the Town's general fund pursuant to C.R.S. § 13-10-115, as amended.

2. Within seven (7) days of the petition if made orally, or in conjunction with the petition if filed in writing, the defendant shall provide a list of all agency custodians who may have custody of any records subject to the order. The defendant may also provide a copy of the order to any other custodian of records subject to the order.

3. When the Municipal Court seals records under this Section, the Municipal Court shall provide a copy of the order to the Colorado Bureau of Investigation ("CBI"), and the defendant shall pay to the CBI any costs related to the sealing of the criminal justice records in the custody of the CBI. The Municipal Court shall also provide a copy of the order to each custodian who may have custody of any records subject to the order.

D. *Effect.*

1. Each custodian that receives a copy of the order shall remove the records that are subject to the order from its records.

2. Upon the entry of an order to seal the records, the defendant and all criminal justice agencies may properly reply, upon inquiry into the matter, that no such records exist with respect to such person.

3. Inspection of the records included in an order sealing criminal records may thereafter be permitted only upon petition by the person who is the subject of the records or by the prosecuting attorney and only for those purposes named in the petition.

4. The defendant need not, in any application or interview, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning the sealed information and may state that no such action has ever occurred, subject to the exceptions in C.R.S. § 24-72-702, *et seq.*, as amended.

5. No record shall be eligible to be sealed until all fines, costs, fees and restitution ordered by the court have been paid in full.

E. *Exceptions.*

1. If the defendant is acquitted of, or if the case dismissed involves the charge of Section 6-4-1 (assault) or Section 6-4-5 (menacing), the court shall allow the prosecuting attorney the opportunity to notify the victim and shall set a return date for a hearing on the motion to seal records within forty-two (42) days after receipt of the motion, or the next available regularly scheduled court date after the forty-two (42) day period has passed. Notice to the victim shall be to the last known address of such person.

2. Nothing in this Section shall be construed to authorize the physical destruction of any criminal justice records.

3. This Section shall not apply to records pertaining to cases where the only charges were traffic infractions, traffic offenses or noncriminal violations as designated in Section 1-4-6 of this Chapter.

4. This Section shall not apply to arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning the arrest and criminal justice information or criminal justice records is made by another criminal justice agency.

Section 2. Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

Section 3. Safety. The Town Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 4. Effective Date. This Ordinance shall take effect 10 days after publication following adoption.

Introduced, Read, Passed and Ordered Published this 9th day of April, 2024.

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk