

**ORDINANCE NO. 2
SERIES 2018**

**AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 1 OF THE VAIL
TOWN CODE BY AMENDING SECTION 1-9-8 AND ADDING A NEW
SECTION 1-9-10, CONCERNING THE SEALING AND EXPUNGEMENT
OF CRIMINAL RECORDS**

WHEREAS, Senate Bill 16-116 provided a simplified process for sealing criminal justice records by providing defendants an option to immediately petition the court for a sealing order and providing for an administrative fee for sealing such records;

WHEREAS, Senate Bill 17-1208 clarified the process for sealing certain criminal records;

WHEREAS, pursuant to C.R.S. § 18-13-122(13), a municipal court may seal criminal records concerning illegal possession or consumption of ethyl alcohol or marijuana by an under-aged person;

WHEREAS, Senate Bill 17-1204 amended and clarified various provisions of Articles 18, 19 and 24, C.R.S., concerning the expungement of juvenile records in certain circumstances; and

WHEREAS, the Town Council wishes to provide a procedure to seal or expunge certain criminal records in accordance with such legislation.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE
TOWN OF VAIL, COLORADO, THAT:**

Section 1. Section 1-9-8 of the Vail Town Code is amended by the addition of a new Subsection F, to read as follows:

1-9-8: COURT COSTS:

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F. Record sealing fee: The Municipal Court shall assess costs of sixty-five dollars (\$65.00) upon a defendant's request to seal his or her criminal justice record for violations other than convictions. Such costs shall be in addition to any fines or penalties.

Section 2. Chapter 9 of Title 1 of the Vail Town Code is hereby amended by the addition of a new Section 1-9-10, to read as follows:

1-9-10: SEALING AND EXPUNGEMENT OF RECORDS:

A. Definitions. For purposes of this Section, the following terms shall have the following meanings:

BASIC IDENTIFICATION INFORMATION: The name, place and date of birth, last-known address, social security number, occupation and address of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

PERSON IN INTEREST: The person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his or her parents or duly appointed legal representative.

JUVENILE: A person under eighteen (18) years of age.

B. Sealing of records other than convictions.

1. A person in interest may petition the Municipal Court for the sealing of all criminal records of a defendant, except basic identification information, in the following circumstances:

- a. Upon the complete dismissal of a case against the defendant;
- b. Upon acquittal of the defendant on all counts in a case;
- c. Upon completion of all terms of a diversion agreement by the defendant; or
- d. Upon completion of a deferred judgment and sentence where all counts are dismissed.

2. Notwithstanding Subsection (B)(1) hereof, a person in interest may not obtain a sealing order if:

- a. The defendant owes restitution, fines, court costs, late fees, or other fees in the case that is the subject of the petition to seal criminal records, unless the Municipal Court vacated the order for restitution, fines, court costs, late fees, or other fees;
- b. An offense is not charged due to a plea agreement in a separate case;
- c. A dismissal occurs as part of a plea agreement in a separate case in which a judgment of conviction has been entered; or
- d. The only charges against defendant involved a class 1 or class 2 misdemeanor traffic offense or a class A or class B traffic infraction.

C. Minors in possession of alcohol or marijuana.

1. Automatic sealing. The Municipal Court shall immediately issue a sealing order in a case in which a defendant under the age of twenty-one (21) is charged with illegal possession or consumption of ethyl alcohol or marijuana in the following circumstances:

- a. Upon the complete dismissal of a case against the defendant;
- b. Upon completion of a deferred judgment or diversion or any other action resulting in dismissal of the case against defendant; or
- c. Upon completion of any court-ordered substance abuse education and payment of any fine for a first time conviction.

2. Sealing upon petition. The defendant may petition the Municipal Court for an order sealing criminal records upon expiration of one (1) year from the date of a second or subsequent conviction for illegal possession or consumption of ethyl alcohol or marijuana. The Municipal Court shall grant the petition if the defendant has not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense during the period of one (1) year following the date of the defendant's conviction.

D. Expungement of juvenile records.

1. The Municipal Court shall automatically expunge the record of a juvenile charged with a violation of the Town Code, within forty-two (42) days of the occurrence of the following:

- a. Upon a finding of not guilty at an adjudicatory trial;
- b. Upon the complete dismissal of a case; or
- c. Upon completion of a sentence.

2. Notwithstanding the requirements of Subsection (D)(1) hereof, the Municipal Court shall not expunge the record of a juvenile if the juvenile has any felony, misdemeanor, petty offense or delinquency actions pending. In such case, the Municipal Court shall stay the petition for expungement proceedings until resolution of any pending cases.

3. The Municipal Court may not expunge the records of a person charged, adjudicated or convicted of any offense or infraction pursuant to the Vehicle and Traffic Law, Title 42, C.R.S.

4. The Municipal Court shall notify the prosecuting attorney that all records in a case charging a juvenile with a municipal violation will be expunged forty-two (42) days after completion of the sentence. The prosecuting attorney may object within the forty-two (42) day period and, in such case, the Municipal Court will schedule a hearing on the expungement with notice sent to the juvenile's last known address. The juvenile is not required to appear at the hearing. The Municipal Court shall expunge the juvenile's records upon written findings that the juvenile successfully completed the sentence or that the case is closed.

Section 3. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance; and the Town Council hereby declares it would have passed this ordinance, and each part, section, subsection, sentence, clause or phrase thereof, regardless of the fact that any one or more parts, sections, subsections, sentences, clauses or phrases be declared invalid.

Section 4. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper for the health, safety and welfare of the Town and the inhabitants thereof.

INTRODUCED, READ ON FIRST READING, APPROVED, AND ORDERED PUBLISHED ONCE IN FULL ON FIRST READING this 6th day of February, 2018 and a public hearing for second reading of this Ordinance is set for the 20th day of February, 2018, in the Council Chambers of the Vail Municipal Building, Vail, Colorado.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk

READ AND APPROVED ON SECOND READING AND ORDERED PUBLISHED this 20th day of February, 2018.

Dave Chapin, Mayor

ATTEST:

Patty McKenny, Town Clerk