

PETERSBURG BOROUGH ORDINANCE #2013-15

AN ORDINANCE PROVIDING FOR TITLE 6 OF THE MUNICIPAL CODE, AND UPDATING CURRENT LANGUAGE TO REFLECT BOROUGH INCORPORATION

Whereas, on January 3, 2013 the Election Division for the State of Alaska certified the election results of the December 18, 2012 incorporation election for the Petersburg Borough, and

Whereas, the certified election confirmed the incorporation of the Petersburg Borough and dissolved the City of Petersburg, and

Whereas, Petersburg Borough Charter, Section 19.06 requires all ordinances, resolutions, regulations, orders and rules in effect for the former City of Petersburg continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the assembly.

Therefore the Petersburg Borough Ordains, the existing provisions for Title 6, Business Taxes, Licenses and Regulations, as noted with amendments below, are hereby approved and adopted as a borough ordinance to be administered on an areawide basis.

Section 1. Classification: This ordinance is of a permanent nature and shall be codified in the Petersburg Borough Code.

Section 2. Purpose: The purpose of this ordinance is to update Code language to reflect borough incorporation.

Section 3. Substantive Provisions: The provisions of the former City of Petersburg (now Service Area 1) Municipal Code, Title 6, Business Taxes, Licenses and Regulations, are hereby transferred and incorporated into this borough ordinance, and shall read as follows. Chapter and section numbers from the prior city code are retained for future referencing and codification of the Borough Code.

TITLE 6 BUSINESS TAXES, LICENSES AND REGULATIONS

Chapter 6.04 - ALCOHOLIC BEVERAGES

Sections:

6.04.010 - Definitions.

6.04.020 - License required.

6.04.030 - Access of persons under the age of twenty-one to licensed premises.

6.04.040 - Employment of minors.

6.04.050 - Hours of sale.

6.04.060 - Serving intoxicated persons prohibited.

6.04.070 - Transfer to, possession and misrepresentation by minors prohibited.

6.04.080 - Licensee responsible for acts of employees.

6.04.090 - Vulgar or obscene language prohibited.

6.04.100 – Violation.

6.04.010 - Definitions

The following words and phrases used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them as follows:

A. "Alcoholic beverage" shall be construed identically with "intoxicating liquor" to include whiskey, brandy, rum, gin, wine, ale, porter, beer, and all other spirituous, vinous, malt and other fermented or distilled liquors intended for human consumption and containing one-half of one percent or more of alcohol by volume.

B. "Board" means the Alcoholic Beverage Control Board.

C. "Consumption" means an act or process by which a person introduces or consumes an intoxicating liquor into his or her body.

D. "Intoxicating liquor" shall have the same meaning as "alcoholic beverage" in subsection A.

E. "License" means every class and type of license issued for the sale of intoxicating liquor as defined in Title 4 of the Alaska Statutes.

F. "Licensed premises" means any or all designated portions of a building, structure or other premises in respect to which a state of Alaska license for the sale of intoxicating liquor has been issued.

G. "Licensee" means every person, firm, company, corporation or other entity to whom a valid and subsisting state of Alaska license for the sale of intoxicating liquor has been issued.

H. "Retail liquor store" shall be construed identically with "retail licensee," and it shall mean any place where intoxicating liquors in the original packages, and when in bulk, are sold for cash or other consideration.

I. "Sale" includes, without limitation, selling, trafficking in, bartering or exchanging for goods in the borough any intoxicating liquors.

6.04.020 - License required.

It is unlawful for any person, firm, company, corporation or other entity to sell any intoxicating liquors within the borough, unless such person, firm, company, corporation or other entity is the owner or holder of a valid and subsisting liquor license issued by the state of Alaska, and complies with all laws and regulations of the state of Alaska relating to the sale of alcoholic beverages.

6.04.030 - Access of persons under the age of twenty-one to licensed premises.

A person under the age of twenty-one years may not knowingly enter or remain in a licensed premises unless (1) accompanied by a parent, guardian or spouse who has attained the age of twenty-one years; (2) the person is at least sixteen years of age, the premises are designated by the board as a restaurant, and the person enters and remains only for dining; or (3) the person is under the age of sixteen years, is accompanied by a person over the age of twenty-one years, the parent or guardian of the under-aged person consents, the premises are designated by the board as a restaurant, and the person enters and remains only for the purpose of dining.

6.04.040 - Employment of minors.

A person sixteen to twenty years of age may enter and remain upon the licensed premises of a hotel or restaurant in the course of his or her employment if the employment does not require or involve the serving, mixing, delivering or dispensing of alcoholic beverages, and, if the person is sixteen or seventeen years of age, the person has the written consent of a parent or guardian and an exemption from the appropriate agency of the state of Alaska for the employment.

6.04.050 – Hours of sale.

A. It is unlawful for any retail licensee to sell, offer for sale, give, barter or exchange upon licensed premises any alcoholic beverage, or to permit the removal of any alcoholic beverages upon or from a licensed premises from two a.m. until eight a.m. on weekdays, and from three a.m. until twelve noon on Sundays.

B. It is unlawful for any licensee to sell, offer for sale, give, barter or exchange upon licensed premises any alcoholic beverages, or to permit the consumption or removal of any alcoholic beverage upon or from a licensed premises from two a.m. until ten a.m. on weekdays, and from three a.m. until twelve noon on Sundays.

C. Licensed restaurants may serve alcoholic beverages with meals beginning at ten a.m. on Sundays.

D. A licensee shall be permitted to sell, offer for sale, give, barter or exchange upon licensed premises any alcoholic beverage, and to permit the consumption or removal of any alcoholic beverages upon or from a licensed premises during the normal hours listed in subsection A, B and C of this section, on days when an election is being held, including elections where a candidate for office appears on the ballot.

6.04.060 - Serving intoxicated persons prohibited.

It is unlawful for any licensee knowingly to permit any intoxicated person to enter licensed premises, or to sell to any such intoxicated person any intoxicating liquors.

6.04.070 - Transfer to, possession and misrepresentation by minors prohibited.

A. It is unlawful to sell, offer for sale, give, barter or exchange intoxicating liquors to any person under the age of twenty-one years.

B. It is unlawful for any person under the age of twenty-one years to procure or possess, or to attempt to procure or possess, intoxicating liquors for his own or her own use or consumption.

C. It is unlawful for any person to misrepresent his or her age, or the age of any person, for the purpose of having intoxicating liquor sold, given, bartered, exchanged or furnished to a person under the age of twenty-one years.

6.04.080 - Licensee responsible for acts of employees.

The act of any agent, servant or employee of any licensee which is a violation of any provision of this chapter, or the laws of the state of Alaska, shall be deemed the act of such licensee, and the licensee shall be guilty of any such violation.

6.04.090 - Vulgar or obscene language prohibited

It is unlawful for any licensee to permit the use of loud, vulgar or obscene language in any licensed premises.

6.04.100 – Violation

A person who violates a provision of this Chapter shall be guilty of a violation, and shall be subject to a fine as provided in Chapter 1.16 of the borough code

Chapter 6.08 - ITINERANT MERCHANTS*

Sections:

6.08.005 - Purpose

6.08.010 - Definitions.

6.08.020 - License required.

6.08.030 - License application.

6.08.040 - Sales tax—Required deposit and collection.

6.08.050 - Use of public streets, roadways, rights-of-way, sidewalks or borough-owned or controlled property prohibited.

6.08.060 - Restrictions and requirements.

6.08.070 – Denial, revocation or suspension of license – appeal.

6.08.080 – Enforcement.

6.08.005 - Purpose.

The purpose of this chapter is to establish licensing procedures for all persons conducting business within the borough without having an established location within the borough and to help protect and preserve the welfare, safety and well being of the residents of the Petersburg borough, and to enable the proper borough officials to control the collection of sales tax.

6.08.010 - Definitions.

For the purpose of this chapter the following terms and phrases shall be defined as follows:

A. "Itinerant merchant" includes the terms "solicitor", "vendor," "peddler," "hawker," and "transient salesman" and means any person, as defined under section 1.04.030(O) of this municipal code, who temporarily engages in the selling of any kind of goods, wares, merchandise, services, stock and bonds or other articles within the borough, regardless of whether same is peddled from house to house, or sold from any room, building, structure, lot or premises temporarily leased or rented for the purpose of carrying on such business. This does not include local fund raising efforts by recognized non-profits and school children, or garage sales held by individuals selling their personal belongings.

6.08.020 - License required.

No person shall engage in the business of an itinerant merchant, as defined in Section 6.08.010, within the borough without first procuring a license from the borough to do so as provided by this chapter. No person shall engage in the business of itinerant merchant in the borough without a current business license from the state of Alaska issued for the same purpose as the itinerant merchant license. A copy of the state of Alaska business license shall be remitted when applying for the borough's business license.

6.08.030 - License application.

A. Any person desiring to engage in the business of itinerant merchant, as defined in Section 6.08.010, within the borough, shall make application to the borough finance department. Such application shall include:

1. The name and address of the person(s) intending to conduct business;
2. The name and address of the firm, corporation, company, partnership or other business entity which the person(s) intending to conduct business represents, if applicable;
3. The kind of goods or services to be sold and a reasonable estimate of the total retail value of the goods or services available for sale;
4. The length of time for which the license is desired;
5. Copy of their State of Alaska business license;
6. The place where such business is to be conducted;
7. Deposit for sales tax as required in Section 6.08.040; and
8. Any other information or documents deemed necessary by the finance department.

B. The license application shall also be accompanied by a fee of fifteen dollars per day for each day the applicant desires to engage in business. Upon expiration of the license, the license may be extended by the payment of the fifteen dollars per day fee for each additional day desired.

C. An application which is incomplete shall be returned to the applicant, at the address provided in the application, with a notice indicating the omitted information or documentation.

D. Upon issuance of a license, the itinerant merchant shall be issued an identification badge by the borough, which shall be worn or posted in such a way as to be conspicuous at all times while the person is engaged in activities licensed under this chapter. The merchant shall present the identification badge and license issued hereunder at the request of any borough police officer or borough official, or at the request of any prospective customer.

E. At the discretion of the finance director, the application may be referred to the borough police department for investigation.

6.08.040 - Sales tax—Required deposit and collection.

A. The license application shall be accompanied by the deposit of an amount equal to six percent of the actual retail value of the goods, articles or services available to be sold, the minimum deposit being \$200. The required deposit shall be in cash or cashier's check.

1. Upon timely payment in full of sales taxes collected by the applicant on the sale of goods, articles or services within the borough, the deposit shall be refunded to the applicant.

2. Sales tax reports and payments shall be in compliance with Chapter 4.28 of the Petersburg Municipal Code except that an itinerant merchant shall have thirty days from the last day in which the applicant was engaged in business in the borough to submit sales tax reports and payment.

3. In the event sales tax reports and payment are not received within thirty days from the last day in which the applicant was engaged in business, the applicant shall forfeit the deposit.

6.08.050 - Use of public streets, roadways, rights-of-way, sidewalks or borough-owned or controlled property prohibited.

A. Itinerant merchants are prohibited from operating on the public streets, roadways, rights-of-way, sidewalks or borough-owned or controlled property, including parking lots.

B. Itinerant merchants may store inventory within a vehicle parked within the borough right-of-way; however, no sales shall occur from the vehicle and all parking and traffic regulations shall apply.

6.08.060 – Restrictions and requirements

A. No person licensed hereunder shall engage in house-to-house in-person solicitations before 8:00 a.m. or after 6:00 p.m. on any day of the week unless requested to do so by the prospective customer.

B. Licenses issued under this chapter shall be nontransferable, and no such license shall be used at any time by any person other than the applicant to whom it was issued.

C. No sales may be solicited or made except in the manner, and from the premises, identified in the license application.

D. An itinerant merchant is prohibited from going in and upon private residences and property in the borough, except where especially invited and requested so to do by the owners and occupants thereof, where a sign has been posted bearing the words “No itinerant merchants”, “No soliciting”, or words of similar import. An itinerant merchant shall leave a residence or property promptly i) when asked to do so by the owner or occupant, or (ii) after receiving a negative response to a solicitation.

6.08.070 Denial, revocation or suspension of license – appeal.

A. The finance director, or the director’s designee, may, upon good cause, deny an application for a license. “Good cause” includes fraud, misrepresentation or false statement contained in the application, previous violation of the provisions of this chapter by the applicant or the business entity which the applicant represents, failure by the applicant or the business entity which the applicant represents to collect or pay over borough sales tax due under a previous license, or prior conviction of any law involving moral turpitude.

B. The finance director, or the director's designee, may, upon good cause, revoke or suspend a license at any time during its term. "Good cause" includes fraud, misrepresentation or false statement in the course of conducting activities under this chapter, or a violation of the provisions of this chapter.

C. The procedure for denial, suspension or revocation of a license under this chapter is as follows:

1. The finance director, or the director's designee, shall give written notice to an applicant that the borough is considering denial of an application, or revocation or suspension of a license previously issued. The notice shall be either personally delivered to the applicant or sent to the applicant via certified mail at the address shown on the application. The notice shall specify the grounds for the considered denial, revocation or suspension, and generally inform the applicant of the right to a hearing and how and when to exercise that right. The notice shall also state that the application for the license may be denied, or the license may be revoked or suspended, without further notice if no demand for hearing is filed.

2. The applicant who receives a notice under subparagraph (1) above may request the holding of a pre-denial or a pre-revocation or suspension hearing, provided that the applicant files a written demand with the finance director within thirty days of the date of mailing or personal delivery of the notice. Failure to timely request or to attend a pre-denial or pre-revocation or suspension hearing shall be deemed a waiver of the right to such hearing. If no demand for a hearing is timely filed, and no information is provided to the finance director, or the director's designee, establishing to his or her satisfaction that the grounds for denial, revocation or suspension have been eliminated or corrected, the finance director, or the director's designee, may proceed immediately to deny, suspend or revoke the license. Notice of the denial, revocation or suspension shall be sent or delivered to the applicant in the same manner as provided in subparagraph (1) above.

3. If requested, a hearing shall be conducted before the finance director, or the director's designee, no sooner than ten business days after receipt of the written demand from the applicant. The hearing shall be conducted in an informal manner and shall not be bound by technical rules of evidence. The applicant may present witnesses and evidence, and may cross-examine witnesses on matters relevant to the issue and rebut evidence presented. The sole issue at the hearing shall be whether there is sufficient evidence demonstrating grounds for denial of the application, or revocation or suspension of the license. At the conclusion of the hearing, the finance director, or the director's designee, shall prepare a written decision. A copy of such decision shall be sent or delivered to the applicant in the same manner as provided in subparagraph (1) above.

4. The applicant may appeal a decision of the finance director, or the director's designee, to the Borough Planning Commission, by filing with the finance director a notice of appeal, with the grounds for appeal set out therein, within thirty days of the date of mailing or delivery of the decision. The procedures for such an appeal shall be established by the Assembly. The subsequent decision of the Planning Commission on the appeal shall be final and conclusive.

6.08.080 Enforcement

A. This chapter may be enforced by the borough police department, and by any other designated borough official.

B. A violation of any provision of this chapter shall cause the violator thereof to be subject to a fine as provided in Chapter 1.16 of the borough code. Each separate action taken which violates a provision of this chapter constitutes a separate violation. Any fine provided shall be cumulative with and in addition to the suspension or revocation of a license granted under this chapter

C. All license fees, penalties, and forfeitures collected under the provisions of this chapter, shall be deposited by the finance director into the appropriate borough fund.

D. In addition to any penalties provided for herein, an action may be instituted by the borough for the collection of license fees and amounts due under the provisions of this or any other chapter of the borough code.

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 5. Effective Date: This Ordinance shall become effective immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of _____, 2013.

ATTEST:

Mark Jensen, Mayor

Kathy O'Rear, Clerk

Adopted:
Published:
Effective: