

**PETERSBURG BOROUGH
ORDINANCE #2015-03**

AN ORDINANCE PROVIDING FOR NEW CHAPTER 9.16, NUISANCES

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 to continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the assembly.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, Chapter 9.16, as set out below, is hereby adopted as a borough ordinance to be administered in Service Area 1 only.

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 ensure nuisances are prevented, discontinued and abated in a timely manner and do not reoccur.

Section 3. Substantive Provisions: Chapter 9.16, entitled Nuisances, is added to the borough code to read as follows:

1. Chapter 9.16 - NUISANCES

Sections:

- 9.16.010 - Purpose and scope.
- 9.16.020 - Definitions.
- 9.16.030 - Unlawful; enumeration.
- 9.16.040 – Abatement – standards to be followed.
- 9.16.050 – Abatement – notice and order.
- 9.16.060 – Abatement – extension of time.
- 9.16.070 – Abatement – enforcement of order.
- 9.16.080 - Appeal to assembly.
- 9.16.090 - Appeal to superior court.
- 9.16.100 - Recovery of costs.
- 9.16.110 - Inspections and right of entry.
- 9.16.120 – Violations; remedies.

9.16.010 – Purpose and scope.

- A. The purpose of this chapter is to ensure that nuisances are prevented, discontinued, and abated in a timely manner and do not reoccur. Other chapters of the Petersburg Borough Municipal Code address nuisances as well. Various municipal departments are responsible for regulating nuisances, depending upon the type or location of the nuisance. The provisions in this chapter, including the description of the various types of nuisances, procedures for prevention, discontinuation, inspection, enforcement, appeal,

and abatement, as well as the appeal and remedies sections, are not exclusive or a limitation on municipal departments in addressing nuisances.

B. Application of this chapter is limited to Service Area 1 of the Borough.

9.16.020 – Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates different:

“Abate” means to act to stop an activity and/or to repair, replace, remove, or otherwise remedy a condition, when such activity or condition constitutes a violation of this code or a borough regulation, by such means and in such a manner and to such an extent as the applicable department director, enforcement officer, or other authorized official determines is necessary in the interest of the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs “abate” and “correct” shall be interchangeable and have the same meaning.

“Building” includes any structure, generally with walls and a roof, used for human habitation, occupancy or use.

“Code enforcement officer” or “enforcement officer” means the borough’s code enforcement officer(s); the building official; the fire marshal or his or her designee; the chief of the Petersburg police department or his or her designee; the director of the community development department or his or her designee; the director of the public works department or his or her designee; or any other person or persons assigned or directed by the borough manager or his or her designee to enforce the regulations of this chapter.

“Costs” means, but is not limited to, include, but are not limited to, the cost of 1) preparation, mailing and service of notices required hereunder, 2) issuance of requisite specifications and abatement contracts, 3) conduct and performance of inspections and the abatement work, 4) any administrative overhead for inspection of the property or abatement work performed, and 5) attorney fees incurred in the abatement process.

“Equipment” means goods used or bought for use primarily in a business.

“Nuisance” means any act or creation which is injurious to the public health or safety, which prevents or obstructs the free and comfortable enjoyment of life and property, causes a detrimental effect on nearby property values, or is dangerous to surrounding property.

“Person responsible for the violation” means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; a mortgagee that has filed an action in foreclosure on the property that is subject to the regulation, based on breach or default of the mortgage agreement, until title to the property is transferred to a third party; a mortgagee of property that is subject to the regulation and has not been occupied by the owner, the owner’s tenant, or a person having the owner’s permission to occupy the premises for a period of at least 90 days; or any person who created, caused, participated in, or has allowed a violation to occur.

“Premises” means any land, including any tract, lot or parcel of land, or easement or right-of-way, and any structures thereon.

“Structure” means anything built, constructed, or erected, including buildings.

“Junk” or “salvage” means any abandoned, broken, used, worn out, wrecked, scrapped, partially or fully dismantled or discarded tangible material, including vehicles or watercraft of all kinds, or any combination of materials or items including appliances, chemicals, building materials, equipment or parts thereof, fiber, machinery, metal, scrap metal, rags, rubber, paper, plastics, lumber or wood, that cannot without further alteration and reconditioning be used for their original purposes.

9.16.030 – Unlawful; enumeration.

A. It is unlawful for any person to create, permit or maintain the existence of any nuisance.

B. Nuisances include, but are not limited to, the following:

1. The deposit, existence or presence in or on any premises of any accumulation of garbage, refuse, manure or animal or vegetable matter which produces a foul, decaying, malodorous or offensive odor, or which serves or constitutes a potential breeding ground or harborage for insects or rodents;
2. The deposit, existence or presence in or on any premises of any human excrement or waste;
3. Attractive nuisances dangerous to children in the form of abandoned buildings, abandoned or broken equipment, hazardous pools or ponds or excavations, neglected machinery or abandoned refrigerators, freezers, or other major appliance;
4. The keeping or maintenance in any area on private property, which is clearly visible from a public street, sidewalk, park or other public area, any accumulation, collection or untidy storage of junk, salvage, or trash, including discarded or unused items, or any condition determined to be unhealthy by a code enforcement officer, or an unsightly condition after written complaint from three or more residents within the neighborhood or general vicinity of the condition;
5. Any building or structure set up, erected, built, moved or maintained or any use of property contrary to the provisions of Title 19.

C. Failure to timely correct nuisances involving a structure may result in the structure becoming or being declared a dangerous building, under the provisions of Chapter 9.20 of this code. If a structure meets the definition of a dangerous building in Chapter 9.20, the borough building official may, but is not required to first attempt to abate the nuisance under the provisions of this chapter.

D. The following chapters of this code also prohibit or restrict other conditions, which are deemed to be nuisances:

1. Abandoned or Junked Vehicles, PMC 11.16.
2. Dangerous Building, PMC 9.20
3. Littering, PMC 9.12

9.16.040 Abatement — standards to be followed.

The code enforcement official, and the assembly if an appeal is taken, shall order the means best calculated to abate wholly the nuisance with the least costs of abatement; and demolition shall not be ordered if repair, vacancy, or removal may accomplish the abatement.

9.16.050 – Abatement - notice and order.

A. Unless a nuisance has created a situation which requires summary abatement, the code enforcement officer may issue an abatement notice and order and serve it in the manner described in this section upon the record owners of the affected property, and, if different from the record owners, the

person creating, permitting or maintaining the nuisance and any non-owner occupant of the affected property. The notice and order shall contain:

1. The street address and legal description sufficient for identification of the affected premises;
 2. The statement that the code enforcement officer has found the premises affected with a nuisance, with a brief and concise description of the nuisance;
 3. A statement of the action required to be taken, as determined by the code enforcement officer, to abate the nuisance, and an order directing such action to be taken;
 4. A statement advising that if any required abatement is not commenced or completed within the time specified, i) the code enforcement officer may proceed to cause the necessary work to be done and charge the cost thereof against the premises, its owner and/or, if applicable, the person creating, permitting or maintaining the nuisance, and ii) civil penalties and/or fines, and administrative fees may be imposed; and
 5. A statement advising that any person having record title or legal interest in the premises may appeal from the notice and order of any action of the code enforcement officer by filing with the borough clerk, within fifteen days from the date of service of such notice and order, an appeal in writing in accordance with the appeal procedure as provided in section 09.16.070, and that failure to appeal will constitute a waiver of all right to contest the order.
- B. The abatement notice and order and any amended or supplemental notice and order shall be posted on the premises affected by the nuisance and served upon the persons set about in paragraph A above either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to the person at that person's last known address. Service by certified mail in the manner herein provided shall be deemed effective on the date of mailing.
- C. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this chapter. The inability or failure of the code enforcement officer to serve any person required to be served shall not invalidate any proceedings herein as to any other person duly served.

9.16.060 – Abatement – extension of time.

Upon receipt of a request from a person required to conform to the abatement order, and agreement in writing by such person that the person will comply with the order if allowed additional time, the code enforcement officer may grant an extension of time within which to abate the nuisance if the code enforcement officer determines that such an extension of time will not create or perpetuate a situation dangerous to life or property.

9.16.070 – Abatement – enforcement of order.

- A. The creation or maintenance of a nuisance is prohibited, and whenever a nuisance is deemed to exist within the borough, it may be abated in either the manner set out in this chapter, or under a different applicable procedure set out in the borough code.
1. Voluntary Correction. When the borough determines that a nuisance exists and prior to the issuance of an abatement notice and order, a code enforcement officer may attempt to secure the voluntary correction of a violation by attempting to contact the person responsible for the violation, explaining the violation, and requesting correction within the time specified. The borough may also enter into a written voluntary correction agreement with any person causing, allowing, or participating in the violation, including the property owner.
 2. Abatement by Borough. The borough may perform the abatement required upon noncompliance with the terms of a written voluntary correction agreement, an unappealed notice

and order, or a final decision of the assembly. The borough may utilize borough employees or a private contractor under borough direction to accomplish the abatement. The borough, its employees and agents using lawful means are expressly authorized to enter upon the property of the violator for such purposes. Nothing in this chapter shall prohibit the borough from pursuing abatement of a violation pursuant to any other laws of the state of Alaska or the borough.

3. Summary Abatement. Whenever any nuisance causes an immediate threat to the public health, safety or welfare or to the environment, the borough may summarily and without prior notice abate the condition. Except for the requirement of notice, all abatement proceedings provided for in this chapter apply to a nuisance summarily abated, including the recovery of the costs of the summary abatement. No notice is required for abatement of a nuisance occurring on the public streets and rights-of-way, or other borough property.

9.16.080 – Abatement – appeal to assembly.

- A. Any person having record title or legal interest in premises which are the subject of an abatement notice and order may appeal from that notice and order by filing a written appeal to the assembly with the office of the borough clerk, within fifteen days from the date of service of such notice and order.
- B. As soon as practicable after receiving the written appeal, the assembly shall fix a date, time and place for the hearing of the appeal by the assembly. Such date shall be not less than ten days nor more than sixty days from the date the appeal was filed with the borough clerk. Written notice of the hearing shall be given to each appellant by the borough clerk, either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.
- C. Failure of a person to file an appeal in accordance with the provisions of this section shall constitute a waiver of that person's right to the assembly hearing and of any adjudication of the notice and order, or any portion thereof.
- D. Only those matters or issues specifically raised by the appellant shall be considered in the hearing on the appeal.
- E. Enforcement of any notice and order of the code enforcement officer issued under this chapter shall be stayed during the pendency of an appeal therefrom which was properly and timely filed. Such a stay does not prevent the code enforcement officer from taking abatement action if the nuisance subsequently becomes subject to summary abatement.
- F. The hearing shall be conducted informally, and may be governed by such rules and procedures as the assembly may choose. At the hearing, the appellant may appear in person or by agent or attorney, and offer documents and testimony, of appellant or other witnesses, in support of the appeal. The code enforcement officer, or their designee, shall appear at the hearing and may offer documents and testimony, of the official or other witnesses, in support of the abatement notice and order. Both the code enforcement officer and the appellant may cross-examine witnesses, under reasonable time limits adopted by the presiding assembly member. The presiding assembly member may administer oaths, and a record shall be kept of the proceedings by the borough clerk.
- G. The assembly, after the hearing, shall issue a written final decision on the appeal, including findings of fact. If it affirms that a nuisance subject to abatement exists, the decision shall also contain an order based upon its findings, directing the abatement within such time period and upon such terms and conditions as it may prescribe. The decision shall be given to each appellant by the borough clerk, either by causing a copy to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at appellant's address shown on the appeal.

- H. If the person who requests a hearing to contest notice and order then fails to appear at the scheduled hearing after having been given notice in the manner provided for by this chapter, the person shall be deemed to have waived the right to appear and present testimony and evidence in support of the appeal. The assembly shall proceed to hear testimony and receive evidence from the code enforcement officer and shall issue a written final decision on the appeal based upon the record before it, including findings of fact as required under 9.16.080(G).

9.16.090 – Appeal to superior court.

The final decision of the assembly issued under this section above may be appealed to the Superior Court, First Judicial District, State of Alaska, within 30 days of the date the decision was issued and in accordance with applicable Court Rules. For purposes of this section, the date of issuance is the date upon which the decision was mailed or delivered to the appellant. Failure to file the notice of appeal in the manner and time specified shall forfeit any right to appeal.

9.16.100– Recovery of costs.

- A. The borough shall bill its costs, including incidental expenses, of pursuing code compliance and/or of abating a violation to the person responsible for the violation and/or against the subject property. Such costs shall become due and payable 30 days after the date of the bill.
- B. The borough manager or designee may in his or her discretion waive in whole or part the assessment of any costs upon a showing that abatement has occurred or is no longer necessary. Any challenge to the amount of the abatement costs must be made within 14 days of issuance of the bill and shall be heard by the borough manager in an informal hearing. The borough manager shall make a written determination as to whether or not the borough's costs were accurate and necessary for accomplishing the abatement.
- C. The costs and expenses may be recovered by the borough in a civil action or by any other permitted method, including use of a collection agency or the exercise of any lien rights possessed by the borough.

9.16.110 – Inspections and right of entry.

The code enforcement officer is authorized to enter on or into premises and structures, and conduct inspections thereof, in order to enforce the provisions of this chapter, including in circumstances where the official has reasonable cause to believe that a nuisance exists in any structure or on any premises subject to this code. The official may enter and inspect such structure or premises at any reasonable time in performance of the official's enforcement activities under this chapter; provided however that where the Constitution of the United States or the State of Alaska requires that the official obtain an administrative search warrant before entering onto premises and making an inspection, the official shall not make the inspection until authorized to do so by a search warrant issued by a court of competent jurisdiction. If the code enforcement officer is a borough official other than the chief of police, then a peace officer shall accompany the abatement official in any entry and inspection conducted under a search warrant.

9.16.120 – Violations and remedies.

- A. 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.
- B. The remedies provided for in this chapter shall be cumulative. In addition to other remedies or procedures provided in the chapter, a nuisance may be restrained, enjoined or otherwise abated by the borough in a civil action. The code enforcement officer may also assess civil penalties, in an amount up to One Hundred Dollars (\$100) per day, for any violation of this chapter; the amount of any such penalty may be set out in the notice and order, or by separate assessment.

C. Each and every day that a person fails to comply beyond a date fixed for compliance shall constitute a separate offense.

2. City of Petersburg Code Chapter 9.16 – Nuisances is repealed.

Sections:

9.16.010 – Defined.

~~For purposes of this chapter, "nuisance" means any act or creation which is injurious to the public health, or which prevents or obstructs the free and comfortable enjoyment of life and property, or is dangerous to surrounding property.~~

9.16.020 – Unlawful

~~It is unlawful for any person, firm or corporation to permit or maintain the existence of any nuisance on any property under his or its control.~~

9.16.030 – Abatement.

~~Whenever a nuisance is deemed to exist, it shall be abated by the health officer or chief of police at the expense of the person maintaining such nuisance.~~

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 in Service Area 1 immediately upon final passage.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this _____ day of _____, 2015.

Mark Jensen, Mayor

ATTEST:

Debra K. Thompson, Clerk

Adopted:
Published:
Effective: